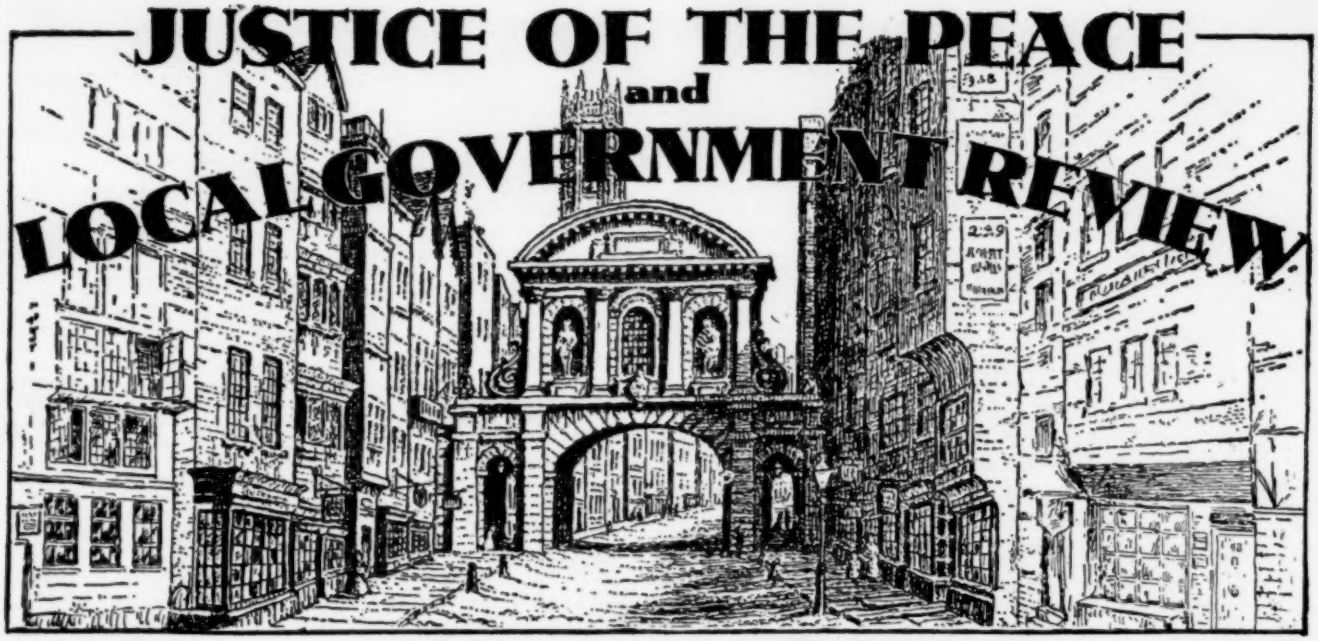
JUSTICE OF THE PEACE and LOCAL GOVERNMENT REVIEW



VOL. CXVIII LONDON: SATURDAY, NOVEMBER 20, 1954 No. 47

CONTENTS

REPORTS

Official & Classified Advertisements, etc.

Official Advertisements (Appointments, Tenders, etc.), 2s. 6d. per line and 3s. 6d. per displayed headline. Classified Advertisements, 24 words 6s. (each additional line 1s. 6d.)

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NOTIFICATION OF VACANCIES ORDER, 1952

The engagement of persons answering these advertisements must be made through a Local Office of the Ministry of Labour or a Scheduled Employment Agency if the applicant is a man aged 18-64 or a woman aged 18-59 inclusive unless he or she, or the employment, is excepted from the provisions of the Notification of Vacancies Order, 1952. *Note :* Barristers, Solicitors, Local Government Officers, who are engaged in a professional, administrative or executive capacity, Police Officers and Social Workers are excepted from the provisions of the Order.

INQUIRIES

YORKSHIRE DETECTIVE BUREAU (T. E. Hoyland, Ex-Detective Sergeant) Member of The Association of British Detectives, World Secret Service Association and Associated American Detective Agencies. DIVORCE — OBSERVATIONS — ENQUIRIES—Civil and Criminal investigations anywhere. Over 1,000 Agents. Over 27 years C.I.D. and Private Detective Experience at your Service. Empire House, 10, Piccadilly, Bradford. Tel. 25129. (After office hours, 26823.) Established 1945.

COUNTY BOROUGH OF DERBY

Assistant in Justices' Clerk's Office

APPLICATIONS are invited for the position of a male assistant in the office of the Clerk to the Justices, preferably from persons who have had some experience of the duties of the office and in the keeping of accounts. The post is whole-time, superannuable, and subject to medical examination and the salary will be £540×£15 to £585.

Applications, giving particulars of experience, together with two recent testimonials, must reach me not later than December 1, 1954.

ARTHUR EXTON,
Clerk of the Magistrates' Courts' Committee.

Justices' Clerk's Office,
Derwent Street,
Derby.

BOROUGH OF ASHTON-UNDER-LYNE

(Population 51,000)

Appointment of Deputy Town Clerk

APPLICATIONS are invited from Solicitors.

Salary—Amended Grade VI until March 31, 1955. Amended Grade VII (£900—£1,100) as from April 1, 1955.

Applications, giving particulars of age, education, qualifications, present and past appointments and experience, and the names of not more than two referees, should be sent to the undersigned, endorsed " Deputy Town Clerk " to arrive not later than November 26, 1954.

The Council will be prepared, in a suitable case, to offer housing accommodation to the successful applicant.

G. A. MALONE,
Town Clerk.

Town Hall,
Ashton-under-Lyne.

BOROUGH OF COLCHESTER

Assistant Solicitor

APPLICATIONS are invited for the post of Assistant Solicitor in the Town Clerk's Department at a salary in accordance with the recommendations of the National Joint Council for Local Authorities' Administrative, etc., Services.

Previous local government experience will be an advantage but is not essential. The appointment will be subject to a satisfactory medical examination and terminable by one month's notice on either side.

Applications, stating age, present salary, qualifications and experience, and the names and addresses of two persons to whom reference may be made must reach the undersigned not later than December 6.

Canvassing will disqualify and relationship to any member or senior officer of the Council must be disclosed in the application.

N. CATCHPOLE,
Town Clerk.

Town Hall,
Colchester.

DURHAM COUNTY MAGISTRATES' COURTS COMMITTEE

Appointment of Justices' Clerk

APPLICATIONS are invited from properly qualified persons for the appointment of whole-time Clerk to the Justices for the Hartlepool and Castle Eden Petty Sessional Division which has a total population of 95,281.

The salary will be £1,550 per annum rising by annual increments of £50 to £1,800 per annum.

In the near future the clerkship to the Justices for the Stockton County Petty Sessional Division will also be held by the person appointed to the above-mentioned post and the salary will then be £1,650 per annum rising by annual increments of £50 to £1,900 plus £100 per annum for acting for more than one division.

The appointment, which may be determined by three calendar months' notice on either side, is superannuable. The successful applicant must pass a medical examination.

Applications stating age, qualifications and experience, together with the names and addresses of two referees, must be delivered to me not later than November 30, 1954.

J. K. HOPE,
Clerk to the Magistrates' Courts Committee.

Shire Hall, Durham.

BERKSHIRE MAGISTRATES' COURTS COMMITTEE

County Petty Sessional Divisions of the Forest, Reading and Windsor

(Estimated population 103,000)

APPLICATIONS are invited for a Senior Court Assistant in the offices of the Clerk to the Justices of the above Divisions. The office at which the assistant will be required to work is at present at Wokingham. Applicants should possess considerable experience of the work of a justices' clerk's office and be capable of taking Courts without supervision.

Salary £600 × £25 — £725 per annum. N.J.C. Conditions for staff of local authorities will apply pending National Conditions of Service for Justices' Clerks' Assistants, and the post is superannuable.

Applications, stating age and full particulars of experience, together with the names of two referees, should reach the undersigned not later than November 24, 1954.

E. R. DAVIES,
Clerk of the Committee.

Shire Hall,
Reading.

Amended Advertisement

BOROUGH OF HENDON

Assistant Solicitor

APPLICATIONS are invited for the abovementioned post with salary in accordance with the new Grade A.P.T. VI (including London Weighting), *i.e.*, £925×£35—£1,030 per annum.

Experience in Local Government and in advocacy will be an advantage.

The appointment is subject to the National Scheme, to the Local Government Superannuation Acts and to the passing of a medical examination.

Applications, stating age, qualifications, details of education and experience, date of admission and full details of present appointment, and giving the names and addresses of three referees, must be delivered to the undersigned by December 6, 1954.

Canvassing will disqualify.

R. H. WILLIAMS,
Town Clerk.

Town Hall,
Hendon, N.W.4.

BOROUGH OF CLITHEROE

Appointment of Town Clerk

APPLICATIONS for this appointment are invited from solicitors with local government experience. Commencing salary £840 per annum.

Salary scale and conditions of service in accordance with Recommendations of the Joint Negotiating Committee for Town Clerks, etc. Appointment subject to three months' notice on either side.

Successful applicant required to pass a medical examination and take up duties on February 1, 1955.

Applications, giving names and addresses of two persons to whom reference may be made, to reach the undersigned not later than noon on Saturday, December 4, 1954.

G. HETHERINGTON,
Town Clerk.

The Castle,
Clitheroe, Lancs.

Justice of the Peace
and
Local Government Review

[ESTABLISHED 1837.]

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NOTES of the WEEK

Slow Hesitant Drivers

It is an admitted fact that the roads in this country are not now adequate for the traffic they have frequently to carry. To make the best of a bad job it is essential for all road users to be reasonable and to consider others as well as themselves. In this connexion we are interested to read that the chief constable of Bristol, speaking recently at a road safety meeting, is reported to have said that one of the main dangers on the road is the slow hesitant driver who keeps to the middle of the road. The report quotes " We have all suffered from him. In my view they are probably more dangerous than the fast expert driver. The man who hugs the centre is one of the main dangers on the roads today." We have this expression of opinion not from an impatient road hog, but from a senior and responsible police officer whose duty it is to seek to enforce the law, and an opinion from such a source is worth serious consideration.

We have heard the slow driver say that he is perfectly entitled to proceed at such pace as he chooses. Equally, a pedestrian might say that he can walk along the middle of the road instead of on the pavement if he so chooses, but it would certainly be unreasonable and highly dangerous for him to do so. The trouble with the type of driver whom the chief constable has in mind is that he seems uncertain of his distances, he cannot gauge, apparently, when he is close to his near side or how much (or rather how little) space he needs to pass another vehicle and he finds it convenient, therefore, to pursue a stately course down the centre of the road to the great inconvenience of other drivers who have more urgent affairs to attend to.

Some people will argue that if in these circumstances following drivers get impatient and try to overtake when they should not the fault is theirs. Some part of it undoubtedly is, but can the slow driver who is *unreasonably* holding the centre of the road at a snail's pace be held entirely free from blame. We think not, but we find it difficult to suggest a cure for this particular disease because the patient does not normally appreciate that he needs treatment. Perhaps some part of the propaganda which is directed at road users generally might be concentrated on these slow drivers, urging them to be reasonable and not to drive in such a way that they hold up long lines of traffic. It can be pointed out to them that they are the primary cause of accidents arising from other drivers trying to overtake them after vainly seeking to get them to give way by drawing-in to their near side.

There is in s. 78 of the Highways Act, 1835, a provision making it an offence " if any person shall in any manner wilfully prevent any other person from passing him or any waggon cart or other carriage or horses mules or other beasts of burden under his care upon such highway," which might in a bad case be relied upon to justify prosecuting a persistent middle of the road driver who refused to give way to allow other cars to pass. But we should much prefer to see the matter put right by a recognition on the part of those who like to drive slower than the average driver that though they are perfectly entitled to do so they ought not in so doing to cause inconvenience to others quite properly wishing to proceed at a faster speed. Live and let live is an admirable motto to act upon in this as in other matters.

Cruelty and Insanity

The M'Naghten Rules are frequently cited in criminal cases, but it is perhaps not widely realized that they may be applied in certain circumstances to matrimonial proceedings. It seems perfectly reasonable that if a man did not know the nature and quality of his acts or if he did not know that what he was doing was wrong, he should no more be liable in respect of matrimonial cruelty than in respect of criminal acts.

In *Astle* v. *Astle* [1939] 3 All E.R. 967, it was decided that where the acts of cruelty are the result of insanity, the husband not being conscious of the nature and quality of his actions relief will not be granted. If a wife makes out a *prima facie* case of cruelty, the onus of proving he was not legally responsible is on the husband: *Brittle* v. *Brittle* [1947] 2 All E.R. 383.

In *Palmer* v. *Palmer* (*The Times*, October 29), the wife appealed against the dismissal of her petition by the Commissioner, the husband's defence being that he was insane at the time when the acts were committed. The Court of Appeal allowed the appeal. The Court referred to a dictum of Hodson, L.J., in *Swan* v. *Swan* [1953] 2 All E.R. 854; 117 J.P. 519, and held that in the present case the husband knew that he had been assaulting his wife, but had not established his ignorance of the fact that it was wrong to do so, and accordingly the second limb of the M'Naghten rule afforded him no defence.

Findings not Keepings

If a man buys a piece of furniture, or a trunk, or some other article, and on getting it home discovers that it contains something of value about which he was ignorant, is he entitled to apply the common saying that findings are keepings? Apart from any legal principle, a truly honest purchaser would surely ask himself: what did I intend to buy, and what did the other man mean to sell? He would add that if neither was aware of the contents being there, there could hardly have been a transaction of purchase and sale of the contents, but only of the article itself. Sale of an article and its contents might take place if that was agreed by the parties specifically.

In the High Court, before Gerrard, J., an action was brought for the delivery of over 1,400 national savings certificates alleged to be wrongfully detained by the defendant, the case being *Thomas* v. *Greenslade* (*The Times*, November 6). The plaintiffs were administrators of a deceased's estate, and sold the

defendant a quantity of scrap metal for £1. It was subsequently found that among it were savings certificates, apparently in a box.

In delivering judgment for the plaintiffs, the learned Judge said that the detention of the certificates was barefaced robbery. As to the law, he said it was most clearly and correctly set out in 2 *Halsbury* 100 (3rd edn.): " If a person purchases a chattel, such as a writing desk or bureau, and subsequently to the purchase finds concealed therein some article the existence of which was unknown to both buyer and seller at the time of the purchase, the property in that article will, apart from special circumstances such as the proved intention of the parties to sell and buy the chattel and its contents known and unknown, remain in the seller of the chattel."

Dog, Gun and Game Licences—Mitigated Penalties

Authorities charged with the duty of collecting road fund licences commonly compound proceedings for offences as authorized by s. 8 of the Vehicles (Excise) Act, 1949.

The practice is not so widespread, however, in relation to licences in respect of dogs, guns and game in respect of which the requisite authority is contained in the Transferred Excise Duties (Application of Enactments) Order, 1952 (S.I. 1952, No. 2205). This order applies to any local authority to whom the power to levy any excise duty has been transferred under s. 6 of the Finance Act, 1908 or s. 15 of the Finance Act, 1949, certain provisions of the Customs and Excise Act, 1952. These provisions, which have effect in relation to the authority and their officers with respect to the transferred duties and the licences on which those duties are imposed, as they have effect in relation to the Commissioners and officers of Customs and Excise with respect to other excise duties and licences, include in relation to duties levied in England and Wales s. 288 (except para. (*d*)) of the Act. This section, *inter alia*, allows Commissioners, if they think fit, to compound any proceedings for an offence under the Customs and Excise Acts.

The amount of revenue thus capable of diversion directly into local exchequers is not large and would not usually be the factor deciding a change of practice. More important is the removal of a part of the work of the overloaded courts of summary jurisdiction and the consequential saving of administrative and police time. It seems to us therefore that wider use of the powers we have noted is worthy of consideration.

Treatment of Homosexual Offenders

The problem of the homosexual who commits criminal offences has been much discussed of late. Apart from questions of morality, the real mischief is seen either in offences involving some measure of public indecency which disgusts ordinary people or in corruption of the young. Habitual offenders of this kind are a real danger, and the usual methods of punishment do not appear to act as a deterrent. In many cases it looks as though they cannot be cured, but are subject to impulses which they are at times unable to resist. This makes them the more dangerous.

At the Devonshire Assizes, Finnemore, J., sentenced a man to three years' imprisonment for offences of indecency involving homosexuality, and before passing sentence said (we quote from *The Times* of November 3) " It is obvious no boy is safe with him. What one wants is some place other than prison where men of this kind who cannot control themselves could be looked after under reasonable conditions with useful work to do. I was thinking of somewhere—it does not exist so far as I know—where a man of this kind could be put under very different conditions from prison, but safe conditions. What we want is one prison specially set aside to deal with these cases."

Assisted Car Purchase Scheme—Income Tax on Interest

The Scheme of Conditions of Service formulated by the National Joint Council for Local Authorities' Administrative, Professional, Technical and Clerical Services includes provisions by which an employing authority may grant a loan to assist in the purchase of a car by officers required to use one in the course of their duties. Interest at 3½ *per cent. per annum* is to be charged and calculated at half-yearly rests: alternatively a sum of, say, 1½ *per cent. per annum* on the amount of the loan can be added and the whole repaid by equal monthly instalments.

Following inquiries we found that originally there had been a diversity of practice by Inspectors of Taxes in the treatment of interest paid; some regarded the payments as annual interest for tax purposes while others took the view that the amounts added to the outstanding loan were not true interest and accordingly that no deductions should be made. The matter is of some importance because the high cost of cars has led to a considerable increase in the number of loans made and a decision as to the right to deduct tax is therefore of interest to a large number of officers. Because of this, and with a view to securing a desired uniformity of treatment a ruling has been obtained, we understand, from Somerset House. This ruling is to the effect that the interest is taxable and that income tax at the standard rate in force should be deducted by borrowers at the time of payment.

We agree entirely with the view expressed: if carried out to the letter it will, however, rather complicate the administrative machine because in practice officers' repayments are made by deductions from salaries and accordingly there would have to be alterations of those agreed figures and further complexities in bringing the appropriate amounts into the general income tax computation of the local authority.

A departure from this procedure which seems to us advantageous has been agreed in certain cases: it certainly does simplify office work. In this modified method each monthly deduction from the officer's salary is made in full thus avoiding deductions from deductions, the local authority notifies the inspector annually of the interest paid by each individual concerned, thus safeguarding his position, and the total interest received is brought each year by the local authority into its statement of taxable income.

The Howard League

There have been signs that the upward trend in crime figures is at last being checked and that we may reasonably hope for some continuous reduction. In the annual report of the Howard League For Penal Reform for the period ended on June 30 comment on this is made as follows " We are only just emerging from a period of an unprecedently high level of criminal activity. It must be hoped that the curve will now rapidly decline. But we live in times in which greater social changes occur more rapidly than ever before, times of uncertainty and danger. This implies stress which may express itself in a high rate of crime and of mental breakdown." The Howard League follows all changes in social conditions vigilantly and seeks to keep abreast of all movements designed to prevent the increase of crime by the adoption of the most enlightened methods of prevention of crime and the treatment of offenders. One of the objects of the League is to create an informed public opinion, and with this aim in view it is prepared to widen the scope of subjects dealt with at summer schools, as well as in lectures and publications.

There is some interesting information about the establishment of a special institution for psychopathic prisoners in Buckinghamshire. It will be designed to accommodate 300 prisoners with sentences long enough to permit sustained treatment. The

East-Hubert Institution, as it is to be known, will also serve as a centre of observation and research, so that the knowledge and experience gained there may eventually benefit many non-criminal psychopaths for whom no effective treatment exists today. At present, in the absence of such an institution, the presence of psychopathic prisoners is a cause of additional tension and special anxiety in over-crowded prisons.

The executive committee of the League is strongly in favour of power being given to the Court of Criminal Appeal and the House of Lords to order a new trial in certain cases. This is based upon the belief that certainty of conviction is a more effective deterrent than severity of punishment, and that an obviously guilty person ought not to escape through some irregularity in the proceedings at the trial. This is a view we have always held.

Cow Versus Coconut

The daily newspapers report three cases at Blackpool, where caterers had supplied customers who asked for " buttered toast," " buttered scone," or " buttered tea-cake " with toast, scones, or tea-cakes spread with margarine. They were convicted, it is said, of " selling commodities not of the substance demanded " ; we take this to be the offence described in s. 3 (1) of the Food and Drugs Act, 1938, and the justices must therefore have found that the supplying of hot margarine was " to the prejudice of the purchaser." The " prejudice " need not be to his stomach ; usually it is to his pocket, since the substituted article would not, commercially speaking, be supplied unless it was cheaper to procure. This is, however, not always so : *Horder* v. *Grainger* (1880) 44 J.P.N. 188, and pecuniary prejudice need not be proved : *Hoyle* v. *Hitchman* (1879) 43 J.P. 430. The *locus classicus* in the lactic field is *Herrington* v. *Slater* (1920) 85 J.P. 83, where the customer asked for hot milk, and was supplied with a hot fluid containing a smaller proportion of fat and other fatty solids than would have been found in genuine milk subjected to nothing worse than boiling. The defence set up in that case was, in effect, that a customer asking for hot milk would not expect it to conform to the legal standard settled for cold milk, and more or less the same argument seems to have been used by the Blackpool margarine spreaders. One of them took also the ingenious linguistic point that, unlike " butter," the word " margarine " has not become a verb : " margarined scones " being, therefore, not a thing for which the customer could ask without violence to the English language, it was fair to assume that the past participle " buttered " had in its adjectival use acquired a secondary meaning. In support of this argument (which did not convince the magistrates) we have seen it stated, since the case was reported in the press, that " nobody in his senses ever expected butter to be used for his toast, scones, or tea-cake, even in the most expensive restaurant or hotel ; it would be taken as a matter of course that the substance would be margarine." Be this as it may, the magistrates in *Herrington* v. *Slater*, *supra*, accepted the defendant's argument about hot milk, but were reversed upon Case Stated, so that it is unlikely that the decision of the Blackpool magistrates, against their three defendants, will be challenged on the ground of common usage. In future, therefore, the customer will be on surer ground for insisting on butter when he asks for it.

And Next to Cream ?

We now await with interest proceedings in regard to cream, when sold by caterers as an ingredient in a compounded dish. Mothers who take children into a restaurant often ask for " fresh cream " : they may be told that the cream is " pure "—and this is well enough, if in fact the stuff satisfies the legal standard ; even though it is not " fresh," there has been no prejudice to the pocket of the parent. What we are told can happen is, however, that the alleged " cream " is tinned milk which looks much the same, and may taste much the same when mixed with cooked fruit or with a number of other sweet ingredients. During the war, it is said to have been often a synthetic product, vegetable or even mineral, with no kinship to the cow, but we will assume for the purpose of the present note that it will today be more likely to be some form of genuine, if thickened, milk. We speak with all hesitancy proper to our absence of scientific knowledge upon these possibilities, but information reaching us suggests that in an eating house " cream " is something to approach in the spirit of " buttered toast." While this note was in the press, Parliament has decided upon new legislation about cream, and it seems that in consequence the appropriate officers of local authorities might now extend their investigations into such delicacies as are nominally enriched with cream.

Registering Caterers

We may be in a minority among those concerned in local government, when we approve the decision of the Minister of Food to remove from the Food and Drugs Bill the requirement that catering premises should be registered with local authorities. We know that many people, not merely on the opposition benches in the House but in the local government world, regarded the proposal that these premises should be registered as constituting the core of the Bill. When the Minister announced the intention not to proceed with that particular provision, there were unsavoury suggestions from the Opposition that the decision was based upon corrupt contributions by the food trade (the " dirty food lobby," as it was expressed in American parlance) to party funds supporting the Government. For our part, we always thought the registration proposal misplaced. If premises or traders are to be put upon a register, with power to refuse registration at the outset and to remove from the register as a penalty for misconduct, or for not keeping the premises in a proper state, well and good, but (if so) this should be spoken of as licensing and not as registration, and the ordinary concommitants of a licence, such as an appeal if a licence is refused in the first place or afterwards withdrawn, should be expressly included. Similarly, putting premises upon a register, with or without a power of removing afterwards from the register, does nothing of itself. It adds nothing to the information which is, or ought to be, in the possession of the local authority, for catering is not an occupation that can be carried on in the back yard without its being known to the public ; the whole essence of a catering business is that customers, including chance customers, can see where it is carried on. In most towns catering establishments are listed in a directory produced by private enterprise, and are discoverable also from the local authority's existing records. The compilation under statute of a separate register at the council's office is, therefore, likely to mislead the public into thinking the register means more than it really does. The essence of the whole matter is inspection, constant, impartial, and honest. Ideally, this could be done by the food trade itself, better than by the local authority, but up to the present nobody has thought along that line, and inspection has been assumed as a matter of course to be a function of local government officials. Until the food trade is organized to take the task into its own hands, if this ever comes about, it must remain with local government, and we do not doubt that the new Bill, when it passes, will provide machinery for some improvement. We have, however, said more than once, and we repeat, that immense improvement in the cleanliness of catering establishments could be brought about under the law as it exists today, if the standard of inspection were improved.

OBSCENE PUBLICATIONS—V

(*Continued from p.* 711, *ante*)

There is another aspect of the enforcement of the law about which responsible persons in the literary world hold strong opinions, and lawyers surely can agree with them. To publish an obscene book or picture is a misdemeanour at common law, and as such can be dealt with by indictment. It is also a matter with which a magistrates' court can deal by the highly special procedure of the Act of 1857, which operates *in rem*. The person primarily affected by this is the occupier of the premises where the book or picture is found : a copy is brought to the notice of the magistrate, and if he considers that publication is a misdemeanour proper to be prosecuted he issues a warrant for seizure of the stock. Now this may be the only practical procedure where the magistrate is asked to deal with vulgar postcards, alleged to be obscene, and it may be harmless as well as convenient in dealing with books about which (as we are content for the present purpose to agree) there is not much room for serious argument. Quite commonly, a bookseller from whom the books have been seized on warrant agrees without more ado to their destruction. Books of the type before the jury in *R.* v. *Reiter*, *supra*, are sold retail at 2*s.* or 2*s.* 6*d.*, and the shopkeeper need not carry a large stock, because a telephone call will bring further copies quickly from the wholesaler. What supply of any one book he has in hand at the time of execution of the warrant is unlikely, therefore, to be worth more than a few pounds, sometimes not more than a few shillings, and it pays him better to acquiesce in its destruction than to defend the case. Moreover, he will commonly desire to get the hearing over, and he may wish not to have more attention than is unavoidable drawn to him in local newspapers. The police, then, get their order for destruction ; other police authorities are informed of the result and booksellers are warned throughout the country. The market is thus spoilt ; the author, to the extent that the case is noticed in the press, is branded as a pornographic writer, whose other books may in consequence be looked at with suspicion, and the publisher as a purveyor of obscenity. And this can happen without any intimation to the publisher or author, and that whatever their standing and however serious the author's literary aims. It is true that, if there is an adjournment and if the publisher is informed that the warrant has been issued, magistrates will nowadays hear counsel against condemnation of the book, as happened this year in the case mentioned above, when the Director of Public Prosecutions launched proceedings against a bookseller, in respect of *Lady Chatterley's Lover*. The intervention in that case by counsel for the publisher was effective to prevent an order for destruction, but it is not satisfactory that the publisher and author have no *locus standi* ; that if they seek to defend the book this can only be by courtesy of the court, and that in many cases they know nothing of the case till it is over. The minimum reform called for upon this aspect of the law is that, when in respect of a book or similar production carrying an imprint a warrant is applied for under the Act of 1857, the publisher of the book should be informed, and given an opportunity of being heard—the intimation to him being given by the clerk of the court or by the prosecution, instead of being left, as now, to depend upon the accidental circumstance, whether the bookseller is inclined to defend or would rather let the case go by default without publicity.

As regards the Customs cases, it is surely almost beyond argument that the owner of goods seized (be these books, or pictures, or surgical appliances) ought to have a remedy before the courts, as he has in the United States.

As regards indictment, it seems unsatisfactory that, if intention be of the essence of the crime, that intention should be averred as common form, or presumed from the mere fact of publication, as seems to be indicated by the modern form of indictment printed in *Archbold*. The cases of *R.* v. *Hicklin* and *R.* v. *Barraclough*, *supra*, reveal a degree of circular reasoning which ought not to remain in the criminal law. This may be difficult to cure, but at least it would not be difficult to reach a more logical and satisfactory position, concentrating on the words " proper to be prosecuted " in the Act of 1857, which (as we have seen above) Blackburn, J., in effect declared in *R.* v. *Hicklin* were of the essence of the misdemeanour—the " let out " by which Chaucer (for example) is tacitly allowed to escape the net, and Margaret of Navarre escaped it by decision of a jury. Upon indictment or under the Act of 1857, or indeed in legal proceedings under the Customs Acts, if such Acts were amended to provide a recourse to such proceedings, could not the court without abrogating its own power to decide, or to take a verdict, upon the issue of obscenity, nevertheless listen to evidence upon the logically separate question, whether the publication ought to be suppressed ? Let it be frankly faced, the full vigour of *R.* v. *Hicklin* cannot be reconciled with more recent cases, from *R.* v. *Thomson* to *R.* v. *Warburg* (*Martin Secker*), *Ltd.*, *supra*, to say nothing of decisions in the United States, nor can the law as declared by Mr. Mead in the case of the Warren Gallery be reconciled with the everyday procedure of the police and superior authorities.

To sum up. The twentieth century Englishman will not accept the freedom to read what he chooses that his forefathers enjoyed, or grant the liberty which Milton urged for the writer, publisher, and painter, to serve the public according to their conscience. To ask this would be futile. Equally, general opinion in England would reject, as would the greater part of the literary world, any avowed censorship of literary matter in advance of publication, such as is applied to plays in England and apparently to books in Ireland. It might be theoretically possible, on the analogy of the censorship of films as now established, to set up within the book trade a voluntary body, with an independent chairman, which would on request examine proposed publications in advance, with the corollary that the Director of Public Prosecutions and police authorities would refrain in practice from proceedings in respect of a publication passed by that body as innocuous. We have not, however, seen any suggestion on these lines ; long and difficult negotiations would be called for before such a suggestion could be put into effect.

It follows that the common law misdemeanour must continue, with the consequence that *l'homme moyen sensuel*, in the shape of a jury or a magistrate, must decide whether the two elements of the offence are present, *viz.*, that the impugned work is obscene and that its publication is proper to be prosecuted : in other words, is not justified on public grounds. So much having been conceded, we should not ourselves propose doing away with the Obscene Publications Act, 1857 : we are ready to agree that for some types of publication the weapon of indictment is too heavy, and the power of summary seizure and destruction can be defended—always granting the fundamental premise, that public opinion will not tolerate freedom in these matters.

Again, on the same premise we do not oppose the power of the Commissioners of Customs to seize books, pictures, or other objects at the ports.

We are, that is to say, not advocating fundamental changes.

What then, are the essential reforms of which we spoke above? First, it is urgent to enact that in proceedings under the Act of 1857 the real defendant, who is the publisher (for simplicity we confine ourselves to books), shall be given as of right a *locus standi* to be heard before the magistrates adjudicate. It should be made the duty either of the clerk of the court or of the prosecution to send notice to him. Secondly, a case begun before magistrates under this Act, otherwise than by the Director of Public Prosecutions, should not proceed beyond the stage of seizure (*i.e.*, there should be no hearing and the book should be released) unless the Director takes over the case, or authorizes the police or other informant to continue. Thirdly, a seizure by the Customs of a book consigned to a person or firm in England should be notified to the Director of Public Prosecutions, who should then be empowered to start proceedings as under the Act of 1857, with notice to the consignee, so that, in these cases as in regard to books already in the country, the courts and not a department of government should decide the issue. We think it worth repeating that this third amendment of the law would bring our country into line with federal law in the United States.

We confess that we are less happy about our own proposal, of giving the Director of Public Prosecutions a bigger share of responsibility, than we should have been some months ago, before some recent cases (notably the case of *The Philanderer* at the Old Bailey and his intervention in the case of Boccaccio in Wiltshire), but we see no other practical mode of avoiding inconsistency between one police jurisdiction and another.

Such then are the procedural reforms that we propose, in line with the normal principle of English law, that a man shall not be condemned unheard or have his property destroyed by the executive without an order from the courts, and that certain types of summary proceeding shall not be begun except by the Attorney General or the Director, who is responsible to him. So far, there is no room for controversy.

A further change in the law which we should welcome is, we admit, more controversial. This would be to allow the defence, and equally (of course) the prosecution to call expert evidence—if "expert" be the proper term to use—upon the second issue which arises in these cases. It being decided by the magistrates under the Act of 1857, or by a jury on a common law indictment, that a book or picture is obscene, let it then be tried whether the publication was "proper to be prosecuted," to quote Lord Campbell's Act, or was (in the words of Sir Fitz-James Stephen) "made in such a manner, to such an extent, or under such circumstances, as to exceed what the public good requires." Legislation to establish the right of the court to hear evidence upon this issue would need great care in drafting; it would give rise to argument, but it would not be impossible to frame or to administer. It would, if enacted, go far to remove a major reproach to English law, and would also have the merit of bringing theory and practice into line, for modern books and pictures as well as for classical literature and art.

We should like to see this done, but, if it be too difficult, at least let Parliament without delay introduce the other and more simple reforms we have suggested. So much at least must be done quickly, if our country is to maintain a reputation for good sense, scholarship and sound administration.

(To be concluded)

TAKING DEPOSITIONS OUTSIDE A MAGISTRATE'S AREA

[CONTRIBUTED]

It is proposed to consider in this article the powers of a magistrate to take a deposition when outside the county or borough for which he acts. The depositions to be considered are of two kinds. First, there are the ordinary depositions taken under the Magistrates' Courts Act, 1952, s. 4, when an examining justice is deciding whether or not to commit a person for trial; such a deposition will hereinafter be called "an ordinary deposition under s. 4." This is usually taken at the court-house but, if a witness is ill, the magistrate should go to his bedside to take his evidence (*R.* v. *Bros, ex parte Hardy* (1910) 74 J.P. 483). The other depositions are those under the Magistrates' Courts Act, 1952, s. 41, which amends and extends the Criminal Law Amendment Act, 1867, s. 6; these are taken from persons dangerously ill and unlikely to recover and must obviously be taken at the bedside of the witness. Such a deposition will hereinafter be called a "dying deposition under s. 41" and what is said in respect of one under s. 41 applies equally to a deposition under the Children and Young Persons Act, 1933, s. 42. No difficulty arises where the deponent is in the magistrate's area and the offence was committed there; it is only when he is outside it that the power of the magistrate to take depositions requires examination. It will be assumed throughout that all the other formalities, *e.g.*, notice to the accused, opportunity to cross-examine, etc., are observed.

It is felt that the reader will be able to grasp the examples to be given better if actual places are mentioned rather than invented ones like "Loamshire" and "Middletown." The county of Stafford affords some good examples but it should be said that the ones which follow are this writer's own deductions and have not been approved by the magistrates or clerks of the places to be mentioned. This article does not deal with the position in London.

The county of Stafford comprises the administrative county and the county boroughs of West Bromwich and Wolverhampton and other towns. Wolverhampton is entirely surrounded by the administrative county of Stafford. West Bromwich abuts on the administrative counties of Stafford and Worcester and the county boroughs of Birmingham (Warwickshire) and Smethwick (Staffordshire). To show that this not a mere academic exercise, it may be mentioned that sick persons from South Staffordshire are sometimes taken to hospitals in Birmingham.

The Magistrates' Courts Act, 1952, s. 116, reads as follows:

"(1) A justice of the peace for a county may act as a justice for that county in any county or borough adjoining the county for which he is justice.

(2) A justice of the peace for a borough may act as a justice for that borough in the county in which the borough is situated or in any county or borough adjoining the borough for which he is justice.

(3) In this section any reference to a county, except a reference to a justice for a county, shall be construed as a reference to an area comprising the administrative county concerned together with any county borough situated or deemed to be situated in that county."

A justice for the administrative county of Stafford may take a deposition for an indictable offence anywhere in Staffordshire

(including its county boroughs) and in any borough or county adjoining Staffordshire (including the county boroughs of that county, *e.g.*, the city of Worcester). In view of s. 116 (3) it would seem that a county can adjoin another place solely through a county borough of that county, *e.g.*, Staffordshire could " adjoin " Birmingham even though the only parts of Staffordshire touching Birmingham were the county boroughs of Smethwick and West Bromwich. A justice for West Bromwich may take a deposition for an indictable offence anywhere in Worcestershire, Staffordshire (including county boroughs in either county) or Birmingham. It would seem at first from s. 116 (3) that he can take such depositions if the witness lies ill in any part of Warwickshire but s. 116 (2) seems to limit this power, by expressly referring to adjoining boroughs, to Birmingham only. A Wolverhampton justice cannot by s. 116 take a deposition unless the witness lies ill somewhere in the administrative county of Stafford or in a county borough deemed to be in Staffordshire. This limitation on the Wolverhampton magistrate's power is not overcome by the Municipal Corporations Act, 1882, s. 158, which reads :

" A justice for a borough shall, with respect to offences committed and matters arising within the borough, have the same jurisdiction and authority as a justice for a county has under any local or general Act with respect to offences committed and matters arising within the county . . ."

This section only seems to give a borough justice the same powers as a county justice has and does not extend the boundaries of any borough to make them run with those of the county in which the borough is situate.

It will have been noted that the powers mentioned above are " to take a deposition for an indictable offence." Where the deposition is an ordinary deposition under s. 4, the indictable offence to which it relates may be not only one committed in the magistrate's area but also one which has come before him by virtue of the Magistrates' Courts Act, 1952, s. 2 (3). Where it is a dying deposition under s. 41, it seems that if proceedings have already been begun before some other magistrate of his area, it can relate to any indictable offence before the latter pursuant to s. 2 (3) ; if proceedings have not been begun, it is not clear whether it can relate only to an indictable offence committed in the area of the magistrate taking the deposition.

Turning to a magistrate's powers at common law, in *Helier* v. *Hundred de Benhurst* (1631) Cro. Car. 211 (as translated by Sir Harbottle Grimston) the plaintiff had been robbed at Benhurst. Pursuant to a statute then in force, he had been examined on oath by a justice of the Hundred, which was in Berkshire, but the examination had taken place in London. The examination was, it seems, a step preparatory to an action by the victim against the Hundred for compensation, where the robbers had not been caught or the money recovered, and it was not a step in any proceedings against the robbers themselves, still at large. As the justice was therefore outside his area when he took the examination, the question was whether the examination was " fecundum formam ftatui." It was argued that a justice could not exercise his jurisdiction outside his county. Hide, C.J., and Whitlock, J., conceived at first that this argument was right but, the report continues, " Jones and myfelf (Croke, J.) conceived " that it was not material where the examination was taken provided that it was taken by a justice of the Hundred, for the statute merely described the person, *viz.*, a justice of the Hundred before whom the examination should be taken. It would be different when a justice had to do an act to compel another to perform, *e.g.*, to imprison for nonfeasance or misfeasance ; such acts could only be done in a place where he had jurisdiction. It was said that even then it was the usual custom for justices to take information and voluntary recognizances outside their county ; they could not, however, compel any person to enter into a recognizance outside the county, " for they cannot ufe coercive power out of the County." This case went to " the Table in Serjeants' Inn " for further argument before six other judges, who held that the examination, though taken outside Berkshire, was " good enough " and Whitlock, J., later, recanting his former view, agreed that it was. This case was mentioned with approval in *R.* v. *Stainforth* (*Inhabitants*) (1848) 12 J.P. 105, which dealt with the signing by justices of a document relating to an apprentice without revealing their area of jurisdiction.

In *Paley on Summary Convictions*, 10th edn., pp. 29-30, the distinction between judicial and ministerial acts is discussed and in *Stone*, 86th edn., p. 4, it is said that " a justice can perform ministerial duties out of his county or borough (*cf. R.* v. *Stainforth* (*Inhabitants*), *supra*) but normally he cannot act judicially except when in an adjoining county or borough (*see* . . . s. 116)." In the *English and Empire Digest*, vol. 33, p. 308, the note of *Helier* v. *Hundred de Benhurst*, *supra*, says that the examination on oath in that case was " a ministerial act " ; in *Paley*, at p. 30, backing warrants, taking statutory declarations and taking declarations of secrecy under the Ballot Act are declared to be ministerial acts which are obligatory on a justice and in respect of which he may act for his jurisdiction when not in it.

So far as taking ordinary depositions under s. 4 is concerned, it is submitted that this is a judicial act ; it is obviously part of judicial proceedings to decide whether the accused shall be discharged or sent for trial. It seems that in respect of those (s. 4) depositions the common law does not extend s. 116 in any way. Is a dying deposition under s. 41, however, a ministerial act ? The procedure certainly resembles that under the statute considered in *Helier* v. *Hundred de Benhurst*, *supra*. A magistrate acting under s. 41 is not exercising any coercive power for he cannot, *by virtue of s.* 41, remand or admit to bail or charge or discharge any person any more than a magistrate, to whom a statutory declaration reveals an offence, can, *by virtue of the Statutory Declarations Act*, order the arrest or remand of the declarant. Under s. 41, all that a magistrate can do, by virtue of that section, is to take the deposition. It is accordingly submitted that taking a dying deposition under s. 41 is a ministerial act and that a justice may so act for his jurisdiction anywhere in England or Wales. In effect, this means that any Wolverhampton justice can take a dying deposition under s. 41 in Birmingham or any other place in England or Wales in respect of an indictable offence committed in Wolverhampton or properly before the Wolverhampton magistrates.

A further question is : Could a Birmingham magistrate take a dying deposition under s. 41 in Birmingham, although it relates to an indictable offence in Wolverhampton ? An authoritative opinion has been expressed in *The Justices' Clerk*, September, 1954, that he cannot and the contrary view now to be argued is put forward with considerable diffidence accordingly. Section 41 provides, as did s. 6 of the Criminal Law Amendment Act, 1867, that " where a person appears to a justice of the peace to be able and willing to give material information relating to an indictable offence or to any person accused of an indictable offence," the justice may take the deposition ; s. 6 of the 1867 Act referred to it so appearing " to any justice." Section 41 does not specifically limit its operation to indictable offences committed within the jurisdiction of that justice but it was said in *ex parte Wallingford Union Guardians* (1841) 9 Dowl. 987 that, where the words of a statute, if construed strictly and literally, would extend the limits of jurisdiction of justices, the court will give them a narrower construction and in *R.* v. *Peerless* (1841) 5 J.P. 239, it was held that the use of the words " any two justices " in a statute did not give jurisdiction to all justices in the United Kingdom even in respect of offences at sea. The wider interpretation urged is

based on the mischief at which s. 41 is aimed, *viz.*, that a witness might die before his evidence can be recorded and therefore the statute must allow speedy action. The procedure is available for all indictable offences and for witnesses on both sides ; it is solely to perpetuate testimony and the justice taking the dying deposition need have no prior knowledge of, or connexion with the case at all. Can it not be argued that it is the taking of the deposition that is the matter within his jurisdiction and the fact that the deposition may relate to an offence outside it is immaterial ? Further, if, as already argued, taking such a deposition is a ministerial act, cannot such an act be performed by any justice ? A statutory declaration can, according to Paley, be taken by a justice outside his area and it is surely not the law that the declaration, wherever taken, must in some way be related to his area ; a Durham man staying in Brighton can presumably make a declaration relating exclusively to Durham affairs before a Brighton magistrate. However, as already stated, the view that a magistrate of the place where the dying witness is can take a deposition relating to an offence committed elsewhere does not command authoritative support.

To sum up :

(1) An ordinary deposition under s. 4 may be taken by a magistrate in his area and in any adjoining county or borough, so far as permitted by the Magistrates' Courts Act, 1952, s. 116, but nowhere else ; and

(2) A dying deposition under s. 41 may be taken by a magistrate of the area, in which the indictable offence has been committed or before whose justices the accused has been properly brought, in his area or in any adjoining county or borough as permitted by s. 116.

If taking a dying deposition under s. 41 is a ministerial act, such a magistrate may also take it anywhere in England or Wales.

It is argued, with hesitation, that a magistrate in whose area the witness lies ill can also take a deposition under s. 41.

G.S.W.

PRIVATE STREET WORKS ACT, 1892

OBJECTION THAT WORKS ARE UNREASONABLE

A common enough ground of objection to the carrying out of private street works under the Private Street Works Act, 1892, is that contained in s. 7 of the Act.

" That the proposed works are insufficient or unreasonable or that the estimated expenses are excessive."

This ground of objection was considered earlier in the year by the Court of Appeal in *Southgate Corporation and Park Estates Ltd.* [1954] 1 All E.R. 520, and it may be helpful to review the authorities and to indicate the matters which must in practice be considered in connexion with such an objection.

EXCESSIVE ESTIMATE

Lord Justice Romer during the course of his judgment in *Southgate Corporation and Park Estates Ltd.*, said this at p. 525 :

" I think the word ' unreasonable ' there means unreasonable on any ground other than insufficiency coupled possibly with the further exception of unreasonableness on the ground of undue lavishness and expenditure. I say that because of the final words in para. (*d*) ' or that the estimated expenses are excessive '."

It is suggested with respect, however, that an objector who wishes to argue that the works proposed are unduly lavish must aver that they are unreasonable, and not, as suggested in the passage just quoted, that the estimated expenses are excessive. This latter is the ground of objection of the frontager who wants to say " I do not object to what you propose to do, but your estimate of the cost is too high." At first sight it is not so easy to see why this was made a separate ground of objection. The reason is that although the frontager has some protection under s. 12 (2)* of the Act against the estimate prepared by the surveyor being too low, he has no remedy (apart from his right of objection under s. 7) if the estimate is too high. The accuracy of the estimate may be of considerable importance to the owner who is proposing to sell his property.

On inquiry, a prospective purchaser would be advised in the normal way of the sum provisionally apportioned against the property. If the estimate on which this provisional apportionment is based is excessive the vendor may not be able to sell his property at such a good price. A prudent owner will therefore ensure that the saleability of his property is not lessened by the existence of an inflated estimate leading to an overlarge provisional apportionment.

A local authority facing an objection on the ground that the estimated expenses are excessive will usually be able to prove the accuracy of their estimate by quoting current tendered rates for work similar to that comprised in the specification.

UNREASONABLENESS

The meaning of " unreasonable " was discussed by Wills, J., in *Mansfield Corporation* v. *Butterworth* [1898] 2 Q.B. 274 at p. 281 *et seq.* when he said :

" The word unreasonable has undoubtedly a wider meaning and I think that it does give the justices jurisdiction to say whether having regard to the scheme as a whole, it is reasonable or not that the proposed works should be done at all. . . ."

" If the justices had found here that the works might not be done at all because they were not required for the purposes of the street used as a street . . . if on that ground they had found that the works were unreasonable I am of opinion that they would have had jurisdiction. . . ."

This dictum has been cited with approval on numerous occasions since. It appears that a local authority must be prepared to show :

(*a*) That it is reasonable that works should be done in the street in question, and

(*b*) That the proposed works are not more than is necessary, *i.e.*, they are not unreasonable in the sense of being lavish or extravagant.

The main criterion, whether it is reasonable that works should be done, must surely be the state of the street itself. A resolution under s. 6 may only be passed if a street is not sewered, levelled, paved, etc., to the satisfaction of the authority : they must therefore in the first place direct their attention to the state of repair. Besides considering the actual physical state of the street, the authority must however have regard to the extent and nature of the use to which the street is (or may reasonably be) put. The works must be required " for the purposes of the street used as a street " (to use the words of Mr. Justice Wills quoted above). An examination of the use of the street will no doubt show that its making up will not be entirely for the benefit of the frontagers, but as Humphreys, J., said in *Allen* v. *Hornchurch U.D.C.* [1938] 2 K.B. at p. 673 " Roads are made partly for the benefit of the frontagers and partly for the benefit of the general public."

Besides these two points, the authority will have to show that the road which they propose to put in will not be unreasonably damaged by the provision of services in the future. It would be unlikely that the carrying out of street works could be reasonable if a main sewer were to be laid in the road shortly after making up. Again if many frontages remain to be developed, there is every chance of an objection's succeeding on the ground that the new road may be damaged by constructional traffic and the opening of trenches to provide services. This was substantially the point taken in the *Southgate* case, where works were held to be premature and so unreasonable.

Assuming that the carrying out of works can be justified, the authority may still face an objection from the frontager who says " I agree that some works should be done, but not such extensive works as are proposed." To meet this objection it will be necessary to show that the proposed works are not extravagant : this involves consideration of (*a*) the proper widths for carriageways and footways and (*b*) the constructional standards to be adopted. As regards widths, an authority may find themselves in difficulty if greater widths are asked for than those recommended in the Schedule of Suggested Minimum Street Widths for Carriageways and Footways of New Streets issued by the Ministry of Local Government and Planning in 1951. Many private streets have no clearly defined carriageways and footways, and there are no deposited plans. In these cases the authority can decide the width of carriageway and footway (*Stratford U.D.C.* v. *Manchester South Junction, etc., Railway Co.* (1904) 61 J.P. 59) provided, presumably, that no more than byelaw widths are required, if byelaws are in force. In such cases the adoption of the Ministry's suggested minimum is a straightforward matter. Otherwise the adoption of the minimum may necessitate action under s. 35 of the Public Health Act, 1925, to vary the relative widths of carriageway and footway.

The question of constructional standards is one for technical evidence, but here again much help may be obtained from the Recommendations issued in 1952 by the Ministry of Transport and the Ministry of Housing and Local Government. The preamble to this document emphasizes the need for avoiding extravagance not only in the widths of streets, but also in the cost of road construction and maintenance.

HARDSHIP TO FRONTAGERS

One argument which the authority should not have to meet under the heading of unreasonableness is the one which may be paraphrased thus " the works are unreasonable because it is unreasonable that the owners of such modest properties should have to meet such large apportionments."

The dictum of Salter, J., in *Chester Corporation* v. *Briggs* [1949] 1 K.B. 239 which appeared to allow this type of argument was disapproved by the Divisional Court in *Allen* v. *Hornchurch U.D.C.* [1938] 2 K.B. 654.

Lord Goddard, C.J., said in *Southgate Corporation* v. *Park Estates Ltd.* [1953] 2 All E.R. at p. 1012 :

" It (the *Mansfield* case) simply says that Parliament puts on the frontagers the burden of paying for these improvements and therefore it is not an objection to the carrying out of the improvement that the court may think it rather hard on the frontagers that they have to pay for some particular form of road."

WORKS INSUFFICIENT

On the whole this objection is not often taken because it may result, if successful, in the authority's producing a more sufficient and consequently more expensive scheme. It was one of the grounds argued in *Southgate Corporation* v. *Park Estates Ltd., supra*, where it was said on behalf of the objectors that the road proposed was of too light a form of construction to stand up to the heavy constructional traffic which was expected to pass over it. In this case, however, the question of unreasonableness was also raised, and it was upon this ground that it was decided.

The fact that a scheme may be held to be insufficient to effect the objects proposed to be effected by the works well illustrates the difficulty of the local authority who proceed under the Act of 1892. Their scheme must avoid the Scylla of extravagance and the Charybdis of insufficiency. It must be estimated for with care, or objections may be sustained either under s. 7 or under s. 12 on the grounds of over or under estimation. It is small wonder that some authorities prefer not to adopt the Act, but rely upon the provisions of s. 150 of the Public Health Act, 1875.

J.K.B.

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* This is the section which allows an objection to be entered to the final apportionment if the actual expenses have without sufficient reason exceeded the estimated expenses by more than 15 *per cent.*

ADDITIONS TO COMMISSIONS

CAMBRIDGE COUNTY

James Albert Victor Grogan, 15, Ermine Street South, Papworth Everard.
Clifford Tebbit, The Old Farm, Toft.
Amos Redhead, Landour, Isaacson Road, Burwell.

CORNWALL COUNTY

Reginald George Billing, 81, Callington Road, Saltash.
Mrs. Roseleen Agnes Corser, 1, Broadclose Hill, Bude.
Wing Commander Alan Geach Parnall, Nancemellan, St. Gennys, nr. Bude.
Reginald Trery Wiltshire, 1, Albert Terrace, Torpoint.

ISLE OF ELY

William Martyn Brown, The Headmaster's House, The King's School, Ely.
John Richard Jimson, 1, Magazine Close, Wisbech.
Sidney Cyril Peploe, 55, Osborne Road, Wisbech.
Leslie Harry Rands, 4, Westmead Avenue, Wisbech.

HUNTINGDON COUNTY

Edward Henry Carley Jones, Abbey Gardens, Ramsey.
John Bradshaw Kelly, 2, Westwood Close, St. Ives, Hunts.
Cyril Hugh Lewis, Headmaster, Kimbolton School, Kimbolton.
Tom Merkley Scotney, Houghton Road, St. Ives, Hunts.
Frederick William Pierson Till, Priory Road, Huntingdon.

LEICESTER COUNTY

Kenneth Stephen Smith, Morcote, Asfordby, Melton Mowbray.

MONTGOMERY COUNTY

Mrs. Eluned Sarah Ashton, Cambrian House, Carno.
Reginald Cowey, Delwood, Westwood Park, Welshpool.
David Philip Davies, Stalloe, Montgomery.
The Hon. Islwyn Edmund Evan Davies, Berthddu, Llandinam.
John Lloyd Hughes, Criggion Hall, Criggion, Ford, Salop.
Mrs. Barbara Margaret Lewis, Milford Hall, Newtown.
John Henry Lloyd, Min-y-nant, Trewern, Welshpool.
David Sidney Miles, Glyngarreg, Llanidloes.
Mrs. Mary Doreen Ethelwynne Mills, Dolenog, Llanidloes.
Iorwerth Rowlands, Brynafon, Felingerrig, Machynlleth.
William Henry Watson, Corner Shop, Welshpool.

PARLIAMENTARY INTELLIGENCE

Progress of Bills

HOUSE OF LORDS

Tuesday, November 9

TRANSPORT CHARGES & ETC. (MISCELLANEOUS PROVISIONS) BILL, read 3a.
EXPIRING LAWS CONTINUANCE (No. 2) BILL, read 2a.

Thursday, November 11

MINES AND QUARRIES BILL, read 3a.

HOUSE OF COMMONS

Wednesday, November 10

CIVIL DEFENCE (ARMED FORCES) BILL, read 3a.

Thursday, November 11

FOOD AND DRUGS AMENDMENT BILL, read 3a.

WEEKLY NOTES OF CASES

QUEEN'S BENCH DIVISION

(Before Lord Goddard, C.J., Cassels, Lynskey, Slade and Parker, JJ.)

October, 12, 13 and 22, 1954

GREEN *v.* BURNETT AND OTHERS

Road Traffic—Defective braking system—Mechanical failure—Circumstances over which driver and owners had no control—Absolute prohibition—Motor Vehicles (Construction and Use) Regulations, 1951, regs. 75, 101.

CASE STATED by Yorkshire (West Riding) justices.

At a court of summary jurisdiction for the Lower Agbrigg Petty Sessional Division an information was preferred by the appellant, Green, a police officer, charging the respondent, Charles Thomas Burnett, motor driver, and the respondents, Chippeck Bedding Co., Ltd., motor vehicle owners, with, on Nov. 3, 1953, at Wrenthorpe, using a motor van on which a part of the braking system was not maintained in good and efficient working order, contrary to regs. 75 and 101 of the Motor Vehicles (Construction and Use) Regulations, 1951. It was established that there had been a failure of part of the braking system, but that such failure was due, not to a failure to maintain, but to a mechanical failure of part of the brake mechanism, and that the user of the vehicle by the owners and driver with brakes in a defective condition arose from circumstances over which they had no control. The justices dismissed the information, and the appellant appealed.

Regulation 75 provides that " . . . every part of every braking system . . . fitted to a motor vehicle or trailer shall at all times while the motor vehicle or trailer is used on a road, be maintained in good and efficient working order and shall be properly adjusted." By reg. 101 : " If any person uses or causes or permits to be used on any road a motor vehicle or trailer in contravention of or fails to comply with any of the preceding regulations . . . he shall for each offence be liable to a fine . . ."

Held, that the regulations imposed an absolute prohibition against user in contravention of the regulations, and that, accordingly, the offence was proved. The appeal must, therefore, be allowed, and the case remitted to the justices with a direction to commit.

Counsel : *F. P. Neil* for the appellant. The respondents did not appear.

Solicitors : *Cummings, Marchant and Ashton*, for *R. C. Linney*, Wakefield.

(Reported by T. R. Fitzwalter-Butler, Esq., Barrister-at-Law.)

JAMES & SONS, LTD. *v.* SMEE

Road Traffic—Defective braking system—Permitting use of vehicle—Charge against owner of vehicle—Offence due to fault of driver and assistant—Liability of owner—Motor Vehicles (Construction and Use) Regulations, 1951, regs. 75, 101.

CASE STATED by Kent justices.

At a court of summary jurisdiction at Bromley an information was preferred by the respondent, Smee, a police officer, charging the appellant company, James & Sons, Ltd., with, on Nov. 10, 1953, at High Street, Bromley, permitting to be used on a road a trailer the braking system of which had not been maintained in good and efficient working order and properly adjusted, contrary to regs. 75 and 101 of the Motor Vehicles (Construction and Use) Regulations, 1951.

The company were the owners of a trailer which on Nov. 10, 1953, in High Street, Bromley, was being drawn by a motor lorry also owned by them and driven by their servant, when it was found that the brake cable of the trailer was not connected to the cable of the drawing vehicle, by reason of which the trailer's brakes were ineffective. The driver said to the respondent : " It must have come unhooked." When the lorry with the trailer attached left the company's premises at Malt Street, Camberwell, the trailer brake cable was properly adjusted and in good order. Later, to load the trailer, it was necessary to uncouple it and disconnect the brake cable. The driver's assistant failed to connect the brake cable, or to connect it properly, and the driver took no steps to check the connexions. The justices convicted the company who were fined 20*s*. The company appealed.

Held (SLADE, J., dissenting), that, although the appellant company would have had no answer if they had been charged with using the vehicle contrary to the regulations, the word " permitting " imported a state of mind; that knowledge or wilfully shutting of one's eyes to the obvious had to be shown; that before a company could be held guilty of permitting a user in contravention of the regulations, it must be proved that some person for whose criminal act the company was responsible permitted, as opposed to committed, the offence; and that, as there was no such evidence in the present case, the appeal must be allowed and the conviction quashed.

Counsel : for the appellants, *Skelhorn, Q.C., and Brandreth*; for the respondent, *Wrightson*.

Solicitors : *Hugh-Jones & Co.*; *Solicitor, Metropolitan Police*.

(Reported by T. R. Fitzwalter-Butler, Esq., Barrister-at-Law.)

MISCELLANEOUS INFORMATION

HISTORY OF TAUNTON

A 14th century document found in the course of research work on the history of Taunton Castle clearly establishes the primacy of Taunton among other Somerset towns. Taunton town councillors heard this pronouncement by Mr. C. H. Goodland at a recent meeting, with great interest.

The document, found and translated from the Latin text by Mr. T. J. Hunt, of Orchard End, Pyrland, was a copy of an Inspeximus and Confirmation in 1317 of a Charter granted to the burgesses of Taunton by King Stephen (1135-1154) during his reign.

The translation reads, in part, " I command that all the burgesses of Taunton, the men of the Bishop of Winchester may have all the immunities and such privileges throughout my whole land of toll and passage dues and of every other custom, as my burgesses of London and of Winchester have. And if anyone afterwards in defiance of this precept shall do them injury or insult, my justice and sheriffs may show that they have such immunities and customs. And in defiance of this no one shall disturb them or their affairs wrongfully under the penalty of ten pounds. . . ."

INTERNAL ADMINISTRATION OF HOSPITALS

A report on the internal administration of hospitals by a committee appointed by the Central Health Services Council was published recently. It is admitted at the outset that the relationships between officers and their governing body and between officers themselves raise all sorts of questions which have been prevented from developing into serious stumbling-blocks only by the genuine desire of officers throughout the service to make the service work. The pattern of administration in the former local authority hospitals service provided an analogy to the present set-up but the functions of the local authority's public health or hospitals committee were different from those of the hospital management committees. The position of their officers both at group and at individual hospital level and the relations between them are in fact different from those of their counterparts in the local authority service. The National Health Service took over 1,143 voluntary hospitals with some 90,000 beds and 1,545 local authority hospitals with about 390,000 beds. After explaining the tripartite administration of the hospital service the committee express the firm view that for the efficient administration of the hospitals it controls the governing body must have one officer to whom it can look for securing that its policy is carried out in all hospitals in the group and for co-ordinating and reviewing all group activities. Except in the " groups " consisting of a single mental hospital, the chief administrative officer is in practice nearly always a layman. The committee regard this as satisfactory, since there is little advantage in appointing a medical man without clinical duties to a post of this nature. More than half the written evidence submitted to the committee and a proportionate time spent in discussion with witnesses was concerned with the question of medical *versus* lay administration. The committee considered this to be unfortunate.

The previous administration of voluntary hospitals and local authority hospitals is then contrasted and an explanation is given of the changes brought about by the National Health Service and of development since 1948. The committee gave much thought to the arguments put forward respectively in favour of and against medical superintendence. The same controversy arose many years ago when a Royal Commission was considering mental hospital administration, and is still a frequent source of disagreement particularly by staff organizations representing the various interests. The committee also considered the " Chiefs of Service " system which has been

developed in North America, under which there is a medical staff organization conforming to a recognized pattern. The committee did not think, however, that this system would be suitable for adoption into English hospitals. In concluding this long section of the report all the committee are able to say on this matter is that " what they would not support would be any attempt to impose any particular pattern of administrative organization on the hospital service but that a freely developing service must be given room for manoeuvre and experiment and must not be tied down, especially in its initial stages, to one rigid administrative formula."

Special consideration is next given in the report to medical administration in sanatoria, infectious diseases hospitals, mental hospitals and mental deficiency hospitals. The committee consider that the governing body of the hospital should be left free, taking into consideration the model orders drawn up by the Ministry of Health, to frame such standing orders defining the functions of its officers as it thinks fit.

Supplies Organizations.

Local authorities with considerable experience of central purchasing schemes which often provided formerly for the supplying of their hospitals will be interested to see the views of the committee on this matter. It seems a little surprising that the committee had no evidence of the extent to which central group contracting has been adopted throughout the country although the committee agree that it has clear advantages. But central purchase by the group has been adopted by many governing bodies, the individual hospitals indenting for their requirements upon the group supplies office. In this matter, however, as in some other important matters, the committee did not seem able to reach any definite conclusion and were impressed with the complications of the whole subject. A special investigation of a much more detailed kind than the committee felt competent to undertake seemed to the committee to be desirable and the committee recommend that the council should consider setting such an investigation on foot.

The last main part of the report sets out the present committee system in its application to the hospital service and there will be general agreement with the view that committees, like entities, should not be multiplied beyond what is necessary, although it is by no means certain that this view is always followed in either local authority or other public administration. The committee suggest that it is undesirable in principle to delegate to committees power to take executive decisions on financial or other important matters. But other matters—for example the ordering of supplies and minor appointments—should be delegated to the greatest practicable extent to committees or even further. It is suggested, further, that delegation should not stop at committee level if administration is not to be intolerably cumbrous. Indeed the committee are convinced that many of the difficulties experienced in hospital administration are due to insufficient delegation of authority to the officers actually in charge of the work to be performed. Any formal delegation of powers to the chairman of the governing body is, in the view of the committee, not only unnecessary but undesirable. His function between meetings of the governing body, is to advise any of the chief officers and to take any necessary decisions on the governing body's behalf.

One of the aspects of hospital committee administration which is so different to local authority administration is the appointment of officers of the hospital service as members of governing bodies and their committees. Some argue that it is wrong to have hospital officers of any kind on their committees and some take the view that other classes of officers should be there also. The Ministry's view is that it is generally undesirable to have officers other than doctors appointed as members of governing bodies and operative committees, even at hospitals other than their own, and with this the committee agree.

EDUCATION IN KENT—1948 TO 1953

The quinquennial report produced by the Kent education committee is a comprehensive account of educational progress in the county during a difficult, but challenging, post-war period. In the important subject of selection of pupils for different types of secondary schools a comprehensive range of standardized objective tests was introduced during the period under review. These are tests of attainment in the basic subjects of the curriculum covering the whole age range of the junior school, five being scholastic and one seeking to measure native intelligence and potential intellectual development. It is interesting to note that the report states that these tests are playing an increasingly important part in the selection procedure and, so far as is known, have no full parallel elsewhere. The scholastic tests deal with spelling, word reading, reading comprehension, mechanical arithmetic and reasoning arithmetic. In the London scheme, however, tests cover English, general knowledge, arithmetic and intelligence. It is noteworthy that the report states that in the last five years the primary schools have come to play a much more intimate part in the whole examination system for grammar school candidates. Mention is made of the fact that eventually the examination itself may cease to occupy the position it now holds in the selection process.

In common with many of the larger authorities, the Kent education committee entered into agreements with voluntary denominational schools in the area under the terms of the Education Act, 1944. From 1949, therefore, the committee became responsible for the buildings of over 200 voluntary schools which had become " aided " or "controlled." As a corollary to this, the number of " unreorganized " primary school departments was reduced during the five years from 147 to 19.

In a section on grammar schools it is reported that most grammar schools in Kent have been scarcely affected by the malady of early leaving which appears to be a matter of some concern in many parts of the country. The technical schools also have apparently won the confidence of parents and have as little difficulty as the Kent grammar schools in retaining a large number of their pupils for more advanced work. Moreover, they have been no more troubled than the grammar schools with the problem of early leavers. This is a remarkable state of affairs, upon which the county is to be congratulated, but it would be interesting to know the reason for this exception to a general and regrettable trend, which is particularly marked in the neighbouring county of London. If Kent is not one of the local authorities to impose a monetary penalty on the parents of premature leavers, is there perhaps some secret alchemy in the forms of undertaking signed by parents of children transferring to selective secondary schools ?

There is an enthralling chapter on some particular fields of activity in the work of the schools, in which are discussed religious and physical education, science, school libraries, music, drama, and visual aids. The section on libraries is particularly encouraging and so is the account of the activities of the Kent Junior Music School, opened in October, 1950, which gives special instruction on Saturday mornings to children of exceptional musical promise. This is the only school of the kind maintained by a county authority.

The Youth Employment Service has been developed and strengthened in Kent, as it has throughout the country. Grammar schools in Kent are now offered full facilities for advising and placing boys and girls. The committee are working in co-operation with the L.C.C., and other local education authorities in the area so that young people may be considered for employment in the whole of the Home Counties region.

Boarding grammar education has been provided for boys at Cranbrook School and Sir Roger Manwood's Grammar School, Sandwich, and for girls at Ashford, Tonbridge, Tunbridge Wells and Folkestone Grammar Schools and at Folkestone Technical School. This provision has been fully utilized with benefit to children whose parents are overseas, whose homes are not within reasonable daily travelling distance or who, through some domestic upheavals or exceptional conditions of health, are unable to profit from normal day school education. Since 1952 only secondary school children have been assisted in this way.

On the purely administrative side, it is interesting to learn that from October, 1951, the responsibility for the financial work of the education department was transferred to the control of the county treasurer. Education finance work is therefore now mainly undertaken by the education finance branch of the county treasurer's department and divisional finance work by divisional finance clerks from the treasurer's department. Whilst on the subject of finance, the shadow of economy in education is mentioned frequently in connexion with various aspects of the education service. The Labour Government's economy circular of 1949 and the Conservative " Standstill " circular of 1951 both played their part in cramping the style of the Kent education committee. With the return to more normal economic conditions, however, it may be hoped that the next quinquennial report will not have to deal with the effects of such unpleasant directives.

THE FIRE SERVICES

The report of Her Majesty's Chief Inspector of Fire Services for 1953 shows that it is not only in the police service but also in the fire service that there is shortage of personnel. There was a deficiency of 1,303 permanent whole-time firemen at the end of the year and a considerable shortage of those who are engaged part-time. It is, however, satisfactory to learn that the number of cases dealt with under the Fire Service (Discipline) Regulations continues to show a decrease as compared with previous years and that there were no appeals to the Secretary of State during the year.

The report stresses the need for fire preventive measures being constantly kept under review and records that the brigades continue to show a keen awareness of the fact that the efficient extinction of fires is not enough by itself and that more and more attention must be paid to fire prevention. Local authorities continue to seek the co-operation of the brigades in administering the legislation dealing with the storage and use of dangerous commodities, and no effort is being spared to convince the general public, by means of exhibitions, press

notices and goodwill inspections, of the potential dangers of fire and the best safeguards against them. Although the fire prevention service in its present form is still in its infancy in most parts of the country a great deal has been done by the service to forge those valuable links with the officers of other services, both central and local and with industry and commerce without which it is impossible for the brigades to be of maximum service to the community. The chief inspector is satisfied that the special training in the main branches of fire prevention which is given at the Fire Service College " is paying good dividends " not only in the high quality of fire prevention work itself but also in the greater insight of operational officers who have taken the course, into the causes of fires and the action which is most likely to prevent similar outbreaks. The constructive suggestions continued in many of the fire reports have been of great value to the various departments and organizations concerned and to fire investigations of all kinds. The Fire Service College continues to receive the full support of the fire authorities. In addition to catering for the fire services of England and Wales, as in previous years, the students included a number from Northern Ireland, the Commonwealth, Eire and other countries overseas.

BETTER DIAGNOSIS FOR THE FEEBLE-MINDED

It was stated in a recent article in the *Lancet* that many adult patients kept in mental deficiency institutions as feeble-minded have intelligence quotient levels between 80 and 100 and are not strictly speaking intellectually defective. It is suggested that these patients need more detailed psychiatric investigation, more accurate diagnosis and more helpful treatment, and that until their problems are recognized and understood, no proper provision will be made for them and they will remain a burden on the community. The writers of the article argue that where the intelligence is well within the normal range, emotional or social maladjustment in itself should not be considered evidence of that arrested or incomplete development of the mind which is a legal criterion of mental deficiency ; and they suggest that this situation has arisen because the authorities concerned with certification seem to base their judgments mainly on social criteria. As the main clinical implication of mental deficiency is an intellectual inadequacy it is considered that mental testing is important and should be done by professional psychologists using standardized procedure ; and that the psychologist administering the test must not only be a skilled examiner but also a person who can make the patient feel at ease and instil in him a feeling of confidence. The writers, from their special experience at a large mental deficiency institution, have reached the conclusion that for many high grade mental defectives, long-term institutional care is unsuitable ; that alternative accommodation is needed for the rehabilitation of emotionally disturbed and socially maladjusted people whose intelligence is near normal, and that small hostels with as much parole as possible and with facilities for educational, industrial and social training suitable for people of normal rather than defective intelligence, would give more rapid and more lasting results than general institutional care.

SCHOOL BROADCASTING

Broadcasting to schools has long been regarded as one of the most valuable and important activities of the B.B.C. The organization of this service is the joint responsibility of the school broadcasting department which arranges and produces the actual programmes and the school broadcasting council which carries out its parallel duties of reviewing the general aim and scope of the programmes and assessing their effectiveness in the schools. Last year the " News commentary for schools " which was introduced as a daily programme during the war and subsequently reduced to two broadcasts a week was withdrawn in favour of an additional current affairs programme. It is noted in the recently published annual report of the corporation that a new development in school broadcasting was the introduction of a weekly period devoted to experimental programmes of various kinds and for different age groups. One was an attempt to make a contribution to the general education of children aged about 13 and of I.Q. 70-75 in secondary and all-age schools taking account of their relative mental and physical development and of the emotional factors involved.

THE NATIONAL TRUST

The annual report of the National Trust shows an increase of membership and an improvement in the financial position. There was a deficit on ordinary maintenance and administration of some £1,500 as compared with large deficits in the two previous years. While the need for free legacies and donations, which may be used for the general purposes of the Trust, remains paramount, the council draws attention to the role played by Specific Purposes Funds in the preservation of land and buildings. In the past year the resources of these funds have been supplemented in three instances by money made available by Parliament under the Historic Buildings and Ancient Monuments Act, 1953. Details are given in the report of several new properties of importance which have passed into the keeping of the Trust since the publication of the last report.

The council is concerned at the inadequate protection afforded to scenery of natural beauty in certain areas by the Town and Country Planning Acts. It is suggested that though most county planning committees take a serious view of their responsibilities they sometimes receive little support from the area planning committees, on which groups with a financial interest in the exploitation of the countryside are often well represented. Contrary to the belief widely held by members of the Trust and the public, existing legislation does not, as at present administered, in the view of the council, offer adequate protection to land and beauty. Trust ownership or covenants with the Trust still offer valuable protection for unspoilt countryside and in particular for stretches of coastal scenery, where the pressure for development is usually most vocal and powerful. In this connexion reference is made to the remark of a county planning officer recently that " the acquisition and preservation of places of natural beauty by the Trust is as important as ever it was before the 1947 Act."

THE UNITED STATES TODAY

A well informed Washington contributor to the current issue of the *Twentieth Century* writes on " America contented and endangered." In July there were 3,346,000 totally unemployed of whom less than 60 *per cent.* were receiving unemployment benefit. In addition there were nearly eight millions not working but not technically unemployed, such as those waiting to begin a new employment or on vacation but it is suggested that many of these people had no work to do. In contrast, the number of civilians employed by the Federal Government has increased from 720,000 20 years ago to 2,160,000. Yet the United States has no Federal career civil service which ranks as a profession. Government administration, according to the writer of this article, is not regarded as requiring distinctive qualifications and experience and does not command esteem. The highest position attainable by persons in the civil service—as distinguished from political appointees—has always been far below the level of a British permanent secretary. Even in the 20 years of Democratic administration the tenure of civil servants remained uncertain because no strong tradition existed against making a position so uncomfortable for a senior officer that he would feel it necessary to resign. It is suggested that the Republican administration has approached the Federal service with desires to find positions for deserving Republicans. To reduce expenditure on personnel and to remove security and loyalty risks all vacancies in the top five grades of the Federal service have been reserved for persons approved by the Republican national committee. Outstanding senior officers, in some cases with service reaching back to the Hoover administration, were dismissed by a month's notice. The writer expresses the view that the quality of personnel in the Federal service continues to deteriorate and many of the best are leaving or have left. He says that few would recommend to exceptionally able young people that they should think of the Federal service as a career. In his opinion the government of the United States goes into the second half of the 20th century with a civil service which does not include any considerable share of the best talent and training available among American people.

THE CIVIL SERVICE

The current issue of the *Political Quarterly* is devoted entirely to considering the civil service in relation to its contemporary tasks and what is described as the " need of the British people." It is made clear that recruitment to the administrative class is now on a wider basis than formerly, although it is suggested by some of the contributors that much still remains to be done before equality of opportunity will have been achieved. In particular, it is suggested that the general position of the scientific, technical and professional classes requires special consideration. As to the retirement of " misfits and malcontents " it is noted that such employees, if they have attained the age of 50, may now be retired compulsorily without complete loss of pension rights. It is argued that the Crichel Down case afforded evidence that there may be sometimes a sense of self-importance on the part of officials or an undue sense of the importance of their office and that the inquiry revealed actions by civil servants which were not those of men trying to do their best in difficult circumstances but rather to use the powers of the State and spend public money irresponsibly and with little regard for economy, efficiency or their duty to treat every individual citizen fairly. The writer of the leading article suggests that the treasury should appoint a standing advisory council on the civil service consisting of leading civil servants, business men and other persons with experience of public life known to be well disposed to the civil service. A second suggestion is that the government should publish an annual report on the civil service.

An article on the structure of the civil service shows that there are 248,000 civil servants in the Post Office and 409,000 in all other departments. Professor W. A. Robson, in an article describing recent trends

in public administration, accepts the traditional view that it is right to recruit the " brightest graduates " from the universities but he believes that the social scientist can be of unique value in assisting a civil servant to understand the social, economic and political background of his working environment. He suggests that members of the administrative class, in particular, and at least some of the professionals, the lawyers, the doctors and the scientists, and the statisticians, in their early years should be given an opportunity, or even be required, to take courses for the diploma of public administration at one of the universities if their previous education has left them completely ignorant of economics, political science, social history, sociology, social psychology and so forth.

LAW AND PENALTIES IN MAGISTERIAL AND OTHER COURTS

No. 96

BETTING ACT, 1853
INTERPRETATION OF AN ADVERTISEMENT

A local bookmaker was charged at Scarborough magistrates' court on October 25 last with using his office for ready-money betting and to this charge he pleaded guilty. He was also charged with causing an advertisement to be published in a local paper whereby it was made to appear that his office was used for the purpose of making bets with persons resorting thereto, contrary to s. 7 of the Betting Act, 1853.

For the prosecution, evidence was given by police witnesses that in consequence of an advertisement which appeared on October 1 in the *Scarborough Evening News*, they kept defendant's premises under observation on Sunday, October 3 last.

The advertisement referred to the televising at 3 *p.m.* on the Sunday of the Grand Prix De L'Arc De Triomphe and continued " for the convenience of those of our clients who may be interested in the above event our offices will be open from 2.45 *p.m.* until the close of the transmission. Bets accepted win, each way, or place only, at par mutual prices." Below was set out the name of defendant's firm and Scarborough telephone number. There was no address given.

Police witnesses stated that 10 men were waiting on the street corner near the defendant's office at 2.47 *p.m.* and at 2.55 *p.m.* when defendant arrived 14 men entered with him. Between then and 3.11 *p.m.* 30 men and four women entered the premises. At 3.20 *p.m.* the police witnesses entered the premises and in a darkened room they saw a group of men around a T.V. set watching horses. In another room at a counter a man was accepting money and bets. In another room they saw defendant who was accepting bets continuously from four telephones. Defendant was shown a copy of the advertisement and admitted that it was his advertisement and said that it had been inserted for the purpose of credit betting.

A statement made by defendant on October 5 was read to the court. In it defendant said that he had opened his office on the Sunday for the convenience of credit clients who were watching the race being televised and he had had no intention of admitting anyone to the premises. He found a considerable number of people on the premises when he arrived but when he attempted to clear them away, some adopted uncompromising attitudes, and he had no alternative but to allow them to remain. Several persons demanded to place bets and he decided to tell one man to accept the bets on a cash basis. He had no intention of encouraging ready-money betting.

In cross examination, a police sergeant said that no proceedings were being taken against the *Scarborough Evening News* in connexion with the advertisement.

Defendant gave evidence to the effect that no objection was raised at the newspaper office with regard to the advertisement, that he had not intended that anyone should come to the office as a result of the advertisement, and had not arranged for any of his staff to be present. He stressed that he had not put his address in the advertisement but in order to make his business more widely known had inserted his telephone number only.

It was urged on behalf of the defendant that the newspaper would not have accepted the advertisement if it was an invitation to people to resort to defendant's premises, and that this fact should be taken into consideration by the court when determining whether or not the advertisement was to be construed in the manner in which the prosecution suggested.

The magistrates decided to convict and imposed a fine of £40 upon the defendant upon the charge to which he had pleaded guilty (he had a previous conviction in October, 1953, for this offence). They also imposed a fine of £10 upon the charge to which the defendant pleaded not guilty.

COMMENT

Mr. Ronald Horsman, clerk to the Scarborough justices, to whom the writer is greatly indebted for this report, mentions that although he had never previously come across charges laid under s. 7 of the Act of 1853 he had another case under the same section the same day! The writer believes that charges under this section are uncommon but it is clear that with the widening of public interest in television there is a risk of offences similar to that outlined above becoming widespread, and it appears also that newspaper proprietors have a further peril to guard against.

It will, of course, be appreciated that the form of the advertisement used by the defendant in this case can be read in two ways, and that as the defendant stressed, one reading precludes any suggestion that he was seeking to encourage clients to *visit* his premises for the purpose of conducting ready-money betting, and the fact that he did not insert his address certainly supports defendant's contention.

On the other hand, the fact that so many of the public were found upon the premises when the police entered indicates that the reading put upon the advertisement by the prosecution, and accepted by the court, was one accepted also by the public and in these circumstances the defendant could not, one thinks, have been surprised when informed that the court had decided to convict.

It will be recalled that s. 7 of the Act prohibits any person from exhibiting or publishing any placard or advertisement whereby it shall be made to appear that any house, office, room, etc., is open, kept or used for the purpose of ready-money betting. The offence is punishable with a fine of £30.

It is to be hoped that when the present, or some other Government, has the courage to introduce a gust of fresh air and commonsense into our Betting Laws, s. 7 of the Act of 1853 will be swept away in company with those other sections of the Act which embarrass all good citizens on account of the hypocritical and unjust principles which underlie them. R.L.H.

No. 97.

A DISTURBING CASE

A 34 year old labourer appeared at Darlington magistrates' court on October 15 last, charged with causing unnecessary suffering to a dog contrary to s. 1 (1) (*a*) of the Protection of Animals Act, 1911, and to this charge he pleaded not guilty. Defendant pleaded guilty to a second charge of being drunk and disorderly contrary to s. 12 of the Licensing Act, 1872.

For the prosecution, evidence was given that a dog was run over accidentally by a lorry and its leg was broken. The lorry driver made inquiries and took the dog to the defendant, who appeared to be " angry with the dog " and told the lorry driver he should have killed it. The lorry driver reported the matter to the police.

The defendant then carried the dog by the scruff of its neck into his house causing the animal to scream and whimper. The noise attracted some women to the scene and one of them saw the defendant in his backyard holding the dog down in a few inches of water in a bath with his left hand and punching it in the ribs with his right hand. When the women attempted to intervene the defendant threatened them and then threw the dog at their feet where, after giving a few kicks, it died. When the police arrived they found the defendant was drunk and when they questioned him he behaved in a disorderly manner.

The defendant in evidence said that he had received a bullet wound in his head during the war and when he had drink " I just sort of go berserk—I am not responsible for what I do."

Defendant added that the dog was not his and was more or less a public menace. He was the only one who had fed it.

The defendant was found quilty and was sentenced to three months' imprisonment and fined £25, and ordered to pay £4 18*s.* costs. In default of payment he was sentenced to a further three months' imprisonment to run consecutively. Defendant was disqualified from keeping a dog or from holding or obtaining a dog licence for 20 years.

COMMENT

This horrible case has been set out in detail for two reasons. First, because there appear to be at the present time far too many cases of cruelty to animals and secondly because in this case the justices made full use of their statutory powers to punish adequately an act of unprovoked brutality.

In the list of penalties set out below this article, will be found two further cases of cruelty to animals and it is gratifying to note that in the case of the cat which was left in a ditch in a sack for 11

days, the justices also imposed a prison sentence. All too often in the past one has read of cases of this nature which are a blot on our civilization, and one has found that the court has considered a fine of £2 or £3 adequate punishment.

In the present case the Darlington justices imposed the maximum penalty permitted by s. 1 of the Act of 1911 as amended by s. 1 of the Protection of Animals Act, 1911 (Amendment Act, 1912).

The power to disqualify a convicted owner from keeping a dog in the future is derived, it will be remembered, from s. 1 of the Protection of Animals (Cruelty to Dogs) Act, 1933. There is no limit to the period for which the court may disqualify and many will feel that the Darlington justices acted wisely in imposing, in this case, the long period of 20 years' disqualification.

(The writer is greatly indebted to Mr. S. R. Wakefield, clerk to the Darlington borough magistrates, for information in regard to this case.)

R.L.H.

PENALTIES

Newtown—October, 1954. Causing unnecessary suffering to a dog. Fined £5, to pay £7 7*s*. costs and disqualified for life from holding a dog licence or keeping a dog. An R.S.P.C.A. inspector found the dog too weak to stand up, its bones were protruding through the skin and its pads were raw and bleeding as a result of its efforts to free itself from a shed. The case was characterized as the worst of its kind ever brought before the bench.

Bridlington—October, 1954. Causing unnecessary suffering to a cat. Three months' imprisonment. Defendant, a woman of 35, suggested she could find a good home on a farm for a cat. She left with the cat in a sack and 11 days later the cat was found in the sack in mud and water in a ditch. The cat was still alive when found but had to be destroyed. Defendant said that she found that when she cycled she could not manage to carry the cat in the sack so she left it in the ditch. She had passed the place on more than one occasion during the time it lay in the ditch.

REVIEWS

The Modern Law of Real Property. Seventh Edition. By G. C. Cheshire, D.C.L. London: Butterworth & Co. (Publishers), Ltd. Price 47s. 6d. net.

Dr. Cheshire's book on real property was first issued in 1925, by way of introduction to the revolutionary changes in property law for which Lord Birkenhead enjoys the credit. The earlier law on real property had been treated lucidly and fully, by established authors, but the legislation of 1925 put all previous textbooks out of date and, in competition with new editions of the old works, Dr. Cheshire's treatise established itself in the foregound at once, having the advantage of being freshly written to introduce students to what was then new law. That position it has retained ever since, and we prophesy that the present (seventh) edition will, in its turn, stand for "real property" in the minds of the coming generation of law students. It is only five years since the sixth edition appeared, and in that time there have not been great changes in the law affecting most aspects of real property. Landlord and tenant has, however, been subject to the perpetual motion introduced by political controversy, and the learned author and his publishers have recognized the desirability of a good deal of recasting. At the same time, it has been realized that the classic English law of property was built up round family settlements, and only came later to take serious account of what for want of a better comprehensive epithet may be called "commercial" dealings in land. This fact is recognized by Dr. Cheshire in the present edition of his work, and the rearrangement in the interest of lucidity, begun in the sixth edition, has been carried further. A second, and even more notable, rearrangement in the text since the sixth edition arises from the learned author's decision upon the best mode of treating the Rent Restrictions Acts for his purposes. Theoretically, he could have said that "landlord and tenant" is itself only one branch of the law of property, and the Rent Restrictions Acts are an illogical and confusing excrescence on that branch: he might therefore have dismissed them, with a mention and a reference to more specific treatises. He has, however, recognized that those Acts are in practice the part of property law which most concerns a large part of the population, and supplies much daily work for the practising solicitor. There is accordingly included, in this edition of the treatise, an appendix of 80 pages devoted entirely to the Rent Restrictions Acts. This is contributed by Mr. J. B. Butterworth of Lincoln's Inn, and has enabled Dr. Cheshire to reduce, to some extent, the bulk of the main portion of the work. With the same object of reducing bulk, he has omitted the references found in previous editions to *Halsbury's Statutes* and the *English and Empire Digest*. We are not sure about the wisdom of omitting these references: in reviewing the sixth edition at 113 J.P.N. 683 we commended their inclusion, as off-setting the giving, otherwise, of single references to cases; since then we ourselves, and probably other users of the book, have found them helpful, and students would find them an encouragement towards looking up original authorities. We should however say that the *Halsbury's Statutes* references are given in the table of statutes at the beginning of the book, so their absence from the text and notes is a secondary matter. We regretted in 1949 the omitting, from the table of cases at the beginning of the book, all dates and references; we prefer the system which is normal in books issued by Butterworth and Company, of giving a full apparatus of references in the table of cases, even if the references in the text or footnotes are reduced, and the absence of this feature becomes more serious with omission of the *Digest* references. Space is no doubt saved, but we think it is a mistaken economy.

So much said upon the formal side, we have nothing but praise for the work itself in its new shape.

Book I, which is the general introduction, covers just over 100 pages, and tells the student everything essential about the difference between land law and other kinds of law in England, both at common law and as things are today. Students are still obliged to know something of how the law worked before 1925, even though we suppose the majority of practising lawyers of the present day had no experience of applying the law before that year. The work, therefore, includes an account which is admirably lucid, in some 20 pages, of the transition from the old to the (then) new law. The introduction is followed by treatment, comparatively brief, of the estate in fee simple in possession. Strictly, we should say it is not correct to call a fee simple absolute in possession "absolute ownership," but this is rather technical than practical.

The interests arising under a strict settlement or trust for sale then have some 200 pages devoted to them, beginning with entailed interests and going on, through equitable powers and future interests, to a general chapter upon trusts.

Part III of the same "Book" has been already mentioned: it deals in another 200 pages with what the learned author calls "commercial" interests, a phrase which he applies to ordinary leaseholds as well as mortgages, rent charges, and restrictive covenants. The difficult topic of easements and profits comes under the same head. In our experience it is sometimes difficult to fit the easement (and still more the profit) into an exposition of real property law, and Dr. Cheshire's experience as a tutor and Vinerian professor have, we think, enabled him to produce one of the most convincing explanations of how these slightly anomalous conceptions fit into English law.

Book III deals with the acquisition of estates and interests. Under this head come the will of lands and intestate succession, while Part V of Book III, headed "incapacities and disabilities," treats broadly of the special position of infants, corporations, charities, and married women. We praised this portion of the sixth edition, and still regard it as an excellent explanation, in short compass.

Then follows the appendix with the Rent Restrictions Acts already mentioned. This is a complete explanation of the Acts, as fitting into the framework of real property law. We do not think that Dr. Cheshire or Mr. Butterworth, who contributed the appendix, would claim that it can take the place of a textbook upon the Acts themselves in their daily context, but, on the assumption that the student must know how these Acts impinge upon the law of property in general, and the law of landlord and tenant in particular, the appendix is well conceived and admirably lucid. We read most of it straight through at a single sitting, with pleasure as well as profit, which is a tribute to anything concerned with the Rent Restrictions Acts.

Only experience will show how the present edition of this new standard work will prove itself in use. So far as can be seen, upon a first examination for purposes of this review, it is not only an improvement upon earlier editions but also the best work of its kind for the senior student at the universities, and for the articled pupil who intends to take honours in his final examination, or perhaps to proceed concurrently to a law degree. We have mentioned improvements which we think could, at the cost of slight expansion of its size, be made upon the formal side (especially for use by students) but, apart from these matters of form, we do not see how it could have been improved, for the purposes of the senior student, or the practitioner who wants a good textbook on the theory of the law.

The Contracts of Public Authorities. By J. D. B. Mitchell. London: G. Bell and Sons, Ltd. Price 25s. net.

This work bears the sub-title "A comparative study"; it is published by Messrs. Bell for the London School of Economics and

Political Science. The author is reader in English Law in the University of London, and the book is founded upon a thesis submitted by him for the degree of Ph.D. It will, therefore, be understood as being more than a textbook upon one aspect of the work of local authorities. Local authorities come into it, and to that extent it will be of professional interest to many of our readers, but the " public authorities " which the learned author has in mind are a much wider class. He deals with contracts made by the appropriate organs of a sovereign state, and his study of the case law in the United Kingdom, France, and the United States covers the creation and enforcement of obligations affecting the Crown in English law; the national government in France, and the federal and State governments in the United States. The work is, however, not entirely upon the high and dry plane of constitutional law; it comes down to local government earth with extracts from the English standard form of building contract, and with references to the power of English local authorities to bind themselves over a period of time, when they are exercising public functions. These are matters of everyday importance. The work will (we suppose) be of no more than limited interest to the practising lawyer, but we have found it stimulating, within the necessary limits of a degree thesis, which can hardly be profound. It can be recommended for serious reading by any person who cares about the underlying principles of law.

Repairs Increases and Controlled Rents. By Desmond Neligan. London : Hadden, Best & Co., Ltd. Price 1s. net.

We have already noticed books on the Housing Repairs and Rents Act as a whole. In the present little work of 18 pages, Mr. Neligan has collected the provisions which landlord and tenant need to know on the subject of increases in recoverable rent on account of repairs. He had found it necessary to give a short account of the Rent Restriction Acts by way of introduction to the new provisions, and has aimed at a happy mean between popular explanation and precision. The work does not profess to be more than a pamphlet for the assistance of the parties interested, and within its limited field of operation we feel sure it will be helpful. Local authorities who have functions in relation to these provisions of the Act of 1954 might indeed obtain several copies, for use by the staff concerned.

The Slaughter of Animals Handbook. By Basil James. London : Hadden, Best & Co., Ltd. Price 7s. net.

The law relating to slaughter-houses and knackers' yards, which had been a good deal complicated by successive Acts of Parliament and by emergency provisions, has been complicated further by the Slaughter-houses Act, 1954. It is as yet too soon to know what will come of the restoration to private butchers of the right (or possibility) of slaughtering for themselves, and at present there is a good deal of confusion both in the meat trade and among local authorities. Mr. James and his publishers have therefore performed a useful service, in issuing the present little work, which sets out at a low price the relevant provisions of the Food and Drugs Act, 1938, and the subsequent statutes together with various statutory instruments and official memoranda. The work is inexpensive, having been issued in paper covers, and consists largely of matter which is available elsewhere, but there is a compendious introduction covering some 20 pages, and we have no doubt that the handbook will be useful.

An Estate Duty Notebook. By G. Boughen Graham. London : The Solicitors' Law Stationery Society, Ltd. Price 17s. 6d. net.

Mr. Graham's preface modestly avows that he has not set out in this small work to compete with major textbooks. On the other hand this is not a student's book. His purpose has been to help solicitors, who wish to find out quickly how to deal with revenue problems affecting estates of the ordinary type, and also probate clerks and others working under more or less supervision. These persons, like the rest of us, need to refresh the memory from time to time and, although the learned author assumes that one of the established major works will be at hand for reference, he appreciates that in the ordinary case it is often useful to be able to look quickly at something less formidable. After preliminary observations, he proceeds to deal with property of the different types to be found in the normal small or medium estate, annuities, insurance policies, and so forth. Gifts *inter vivos* and the five years' rule will be found dealt with in 15 pages, rather more clearly than has sometimes been done in more pretentious books. Looking through the work we have found useful headings such as a dwelling-house occupied by the deceased; the ascertainment of beneficial interests in joint property; and assurance policies provided by the deceased. We do not think there is any ordinary question which cannot be answered from this notebook, by a person who possesses day to day experience of the subject dealt with.

The General Rate. By C. A. C. Chesterman. Folkestone : P. & T. Publications, Ltd. Price 30s. net.

This work by the chief rating assistant to the corporation of Folkestone is intended primarily for the student and rating practitioner. It is, in other words, a practical handbook covering something like the same ground as earlier manuals, but brought up to date by including the latest statute law and case law. It does not pretend to compete with a major work like *Ryde on Rating* but, for its own limited purposes, it should be useful. The present law of rating is largely to be found in statutes which do not correspond to the practice of the day, and everyone concerned must echo the plea of the present author in his preface, for the introduction of a modern and comprehensive rating code. The law of rating as applied in practice is entangled with considerations of policy, derating and the like, and this no doubt has militated against modernizing some of its provisions. Meanwhile, it is the more important that rating officials and also professional men, such as estate agents and indeed solicitors, shall be able to lay their hand upon a textbook which will tell them, in up-to-date language and convenient form, what is the legal position upon all aspects of the law of rating. The present work treats of rateable occupation and the now numerous exemptions (largely illogical); then with the basis of assessment, pulled about by recent statutes, going on to appeals, recovery of rates, liquidation of companies and bankruptcy. In the table of cases at the beginning of the book dates alone are given (without references), but there is a sufficient apparatus of reference in the footnotes to the text, and it may be that, for the persons for whom the book is intended, no more than this is necessary. In all other respects the book is well got up and printed, and an appendix contains the requisite statutory instruments and other subordinate matter. We have not yet had an opportunity of testing it in daily work, but upon first examination we think it is likely to be quite helpful, and that rating authorities would be well advised to add it to their office library.

The Individualist. By Norman Tiptaft. Birmingham : Norman Tiptaft, Ltd. Price 20s.

This book by a former lord mayor of Birmingham is partly political and mainly autobiographical. Frankly, we would have preferred it to have been wholly autobiographical—for Mr. Tiptaft has had an interesting and full life, and an account of it makes attractive reading—but in our opinion the effect is rather marred by the author's explosive strictures applied, in some cases we think unreasonably, towards Whitehall.

The Law of Life Assurance. By David Houseman. London : Butterworth & Co. (Publishers) Ltd. Price 22s. 6d. net.

This is the fourth edition of a work which has already proved its daily value in its own field. The author is a solicitor who is (we gather) in the employment of a life assurance company. He claims, modestly enough, to have produced the work as an introduction for the assistance of readers in similar positions to his own, but in practice it will be found helpful by a wider public. Every solicitor from time to time is confronted with life assurance business, either on behalf of a client who is still alive, or in dealing with estates comprising money due under a policy. On the other hand, the solicitor in ordinary practice may not think it worth while to add to his library one of the most expensive works on this one subject. Mr. Houseman's book will fill his needs for most ordinary purposes. There is a short explanation of the law of contract generally, for the benefit of the company official who is not a lawyer, with its bearing on insurance policies and practice in particular, and then an analysis of the different forms of life assurance contracts, and the types of documents involved. Proof of death, and title under English, Scottish, and Northern Irish law are dealt with, and the important topic of notices in regard to life assurance is analysed in some detail. Various modes of dealing with a policy, where the holder is solvent and insolvent, are set out, and the position of married women and other members of the family is also dealt with. Finally, the increasingly important tax aspect of life assurance is spread over two chapters. In the text itself there are brief statements of the effect of important cases, and extracts from the statutes. We notice particularly the inclusion of notes of particular policies, which have been construed by the courts. In his introduction, the learned author comments on the tendency of those preparing legal documents to follow precedent without full consideration, and he has endeavoured to show where innovations can advantageously be made. His object here is explained as being, in part, to serve the interests of policy holders not less than those of shareholders in life assurance companies, and this is undoubtedly the right approach. The subject is not one with which we can claim specialized acquaintance, but so far as we can judge this work, which is of handy size, will meet many of the needs of the solicitor as well as the insurance agent and the company official.

BOOKS AND PAPERS RECEIVED

Archbold's Criminal Pleading, Evidence and Practice. Thirty-third edition. Third Cumulative Supplement. Edited by T. R. Fitzwalter Butler and Marston Garsia. London: Sweet and Maxwell Ltd., 2 & 3 Chancery Lane.

THE WEEK IN PARLIAMENT

From Our Lobby Correspondent

EPSOM MAGISTRATE AND MOTORISTS

Earl Howe asked the Government in the House of Lords whether their attention had been drawn to the remark reported to have been made by the chairman of the Epsom bench of magistrates on his re-election ; and whether they were satisfied that the utterances of that individual were such as to ensure the impartial administration of justice for the defendants in motor cases brought before that bench.

The Lord Chancellor replied that the Government's attention had been drawn to the remarks attributed to the chairman of the Epsom magistrates' court on that occasion. The chairman had already taken an opportunity of correcting, by a further statement in court, the misleading impression of his views which his previous observations appeared to have caused. In those circumstances, the second part of the question did not arise.

Earl Howe : " While appreciating the fact that the gentleman concerned has adopted the age-old principle of repudiating the reporter, does the noble and learned Viscount consider the expression ' speed-crazy hooligans on the roads ' is worthy of a man holding such an important legal office and gives an assurance to defendants in motoring cases that they will secure an impartial administration of justice ? "

The Lord Chancellor : " My noble Friend has struck a doughty blow for motorists, of whom he is so distinguished a member, and the gentleman in question has made the *amende honourable*. I would therefore ask my noble Friend to let the matter rest there."

PUPILS' VISIT TO COURT

Sir I. Orr-Ewing (Weston-super-Mare) asked the Minister of Education in the Commons whether he was aware that 11 boys and girls from Lydney Grammar School, whose headmaster was one of the magistrates, attended the hearing of a murder charge at Lydney magistrates' court on October 4 ; and whether he would issue instructions to prevent any children or persons on a school register from attending magistrates' courts as spectators during school hours.

The Minister of Education, Sir David Eccles, replied that he was informed that, as part of a social studies course, 10 sixth form pupils from Lydney Grammar School visited the local magistrates' court on October 4. Such visits were quite common as part of a course of that kind, and local education authorities and schools, who were responsible for arranging them, were aware of the importance of ensuring that the pupils did not hear unsuitable cases. In his view, an error of judgment was made in that instance, but he did not consider that any action on his part was called for.

ACQUITTED DEFENDANTS AND COSTS

Mr. D. G. Bullard (Norfolk S.W.) asked the Secretary of State for the Home Department if he would write to all police authorities requesting them not to pursue a claim for costs for contingent actions in a case where the defendant had been acquitted of a criminal charge.

The Secretary of State for the Home Department, Major Lloyd George, replied that he was aware of a recent case which had received some publicity, but he had no authority to intervene in a matter of that kind, which was entirely one for the decision of the police authority concerned, and it would not be appropriate for him to offer any general advice to police authorities on the subject.

Brigadier F. Medlicott (Norfolk, C.) : " Does not this disclose a very unsatisfactory position, because it amounts to a breach of the principle that a man is deemed to be innocent until he is proved guilty, and here is a man who, in the eyes of the law was found innocent ? Is it not unsatisfactory that he should have to pay any costs at all ? "

Major Lloyd George : " I am not arguing that at the moment. I am prepared to look at anything which my hon. and gallant Friend is prepared to send me. I can only say that I have no authority to intervene in a matter of this kind."

ENFORCEMENT OF BETTING LAW

Mr. W. Nally (Bilston) asked the Secretary of State for the Home Department if he would conduct an inquiry into the circumstances under which all police authorities, whilst strictly enforcing the laws relating to betting and lotteries against religious, social and other organizations were failing to take cognisance of continued and open breaches of existing law by bookmakers and their employees.

Replying in the negative, Major Lloyd George said that the matter had been considered by the Royal Commission on Betting, Lotteries and Gaming, who were satisfied that the police enforced the law relating to betting to the extent which their resources allowed. He had no reason to think that that was not still the case.

CHAOS COME AGAIN

" The whole world is in a state of chassis," says a character in *Juno and the Paycock*. In this neat phrase Mr. Sean O'Casey sums up both the Irishman's addiction to malapropisms of the most delightful kind, and what is perhaps a typically Hibernian view of the topsy-turvy universe. The Englishman, and probably the Scotsman and the Welshman also, would doubtless insist upon excepting Great Britain from this generalization.

One particular facet of the British character that arouses wonder in the foreign observer is its traditional self-discipline and respect for law and order. Our police carry no lethal weapons; no display of force is necessary to secure the safety of Exalted Personages when they go a solemn progress through the streets. Those who were privileged to witness last year's Coronation Procession, or to see pictures of the Royal Tour that followed, were most strongly impressed by the comparative freedom and ease with which the Queen and her Consort passed among vast throngs and mingled with the people of innumerable races in many distant lands. Such intimate methods are in striking contrast to the fussy demonstrations of protective power elsewhere—the hordes of motor-cyclists, armed police and body-guards who accompany dictators and demagogues alike, when they go about among the people.

In a humbler sphere the queues at cab-ranks, booking-offices and bus-stops are, on the whole, orderly and disciplined, readily obedient to authority and considerate of the aged and infirm. And the audiences at political meetings, or those that listen to the orators who, on an improvized rostrum, preach panaceas of every variety for mankind's ills, are almost always tolerant and peaceable, restricting their heckling to good-humoured banter. " Scenes " of any kind are embarrassing to most men and women in this country—unless they happen to be spoilt by indiscriminate adulation, like certain leading ladies, television commentators, and professional politicians, from whom something of the kind is expected, now and then, to keep them in the news.

On these matters of public order the common law, from early times, has been formulated on the basis that prevention is better than cure. Five hundred years ago it was laid down that assemblies were not punishable unless *in terrorem populi* ; every student knows that, while there is no statutory right of, or prohibition against, public meeting, an assembly of three or more persons is unlawful if there is " an intent to carry out a common purpose—whether that purpose be lawful or not—in such a way as to give firm and courageous persons in the neighbourhood reasonable grounds to apprehend a breach of the peace." The essence of a riot, at common law, is a common intent, even by as few as three persons, to resist opposition, if they attempt to execute some private enterprise (whether lawful or not) in a violent and turbulent manner, to the terror of the people. The sturdy commonsense of the nation was

illustrated in *Beatty* v. *Gillbanks* (1882), 9 Q.B.D. 308, which upheld the right of an unpopular organization to hold a peaceable meeting in a non-provocative manner, notwithstanding the risk of violence from their opponents; and in *Wise* v. *Dunning* [1902] 1 K.B. 167, where a meeting, otherwise lawful, ceased to be so when a speaker used provocative language calculated to incite its hearers to use force against peaceable citizens. Disorder and violence are to be nipped in the bud, not allowed to flourish unchecked to the point where they can be cut down only by the most drastic measures.

Foreigners of a more volatile temperament, especially those of Mediterranean stock, regard the traditional British *sang-froid* with mixed sentiments of admiration and ridicule. Being accustomed "to let themselves go," our friends abroad regard us as inhibited creatures, concealing beneath a facade of calm the natural reactions to which it is only human to yield. There may be some truth in this appraisal, and that perhaps is the motive behind the occasional outbreaks of high spirits among the young (and the not so young) on Boat Race Night, Guy Fawkes Day and on ceremonial occasions in our universities. At such times decorum is thrown to the winds, and the carnival spirit reigns supreme.

With these considerations in mind the Senate of Glasgow University recently thought fit to issue a warning to students who have, in past years, signalized the occasion of the Rectorial Address by Saturnalian excesses. A certain amount of "enthusiastic heckling" is traditional at that seat of learning, but last year "behaviour passed the bounds of the tolerable." The Address was drowned in the noise of shouting, singing and handbells, and the proceedings took place "in a haze of tomatoes, rotten eggs and bags of flour that descended on the platform," the ceremony being further enlivened by the release, in the Hall of Assembly, of "an intoxicated duck."

Reprehensible as it is on grounds of humanity, this final touch of fantasy recalls some of the supreme insanities of Messrs. Groucho, Chico and Harpo Marx in those activities where—

> "Chaos umpire sits
> And, by decision, more embroils the fray
> By which he reigns."

For in their crazy antics, as in such "rags" as that at Glasgow, there is an organized indiscipline—an ordered disorder—calling for generalship of consummate skill. Therein lies that paradoxical element which is perhaps the most valuable among the gifts of British genius to the world at large.

It is good to know that this year's Glasgow celebrations have been marked by a spirit of compromise. Due note has been taken of the Senators' reproof, borrowed no doubt from their famous compatriot, Lady Macbeth:

> "You have displac'd the mirth, broke the good meeting
> With most admir'd disorder."

No eggs, tomatoes or bags of flour were this time in evidence—and no inebriated duck. For all that, tradition was maintained—"a mixture of Guy Fawkes Night, Hallowe'en and Walpurgis Night—all to the accompaniment of bagpipes and exploding fireworks . . . A bugler with a badly-played repertoire of the Cavalry Charge and 'Come to the Cookhouse Door' did his best"—again, it seems, in emulation of a classic scene in *Paradise Lost*:

> "Sonorous metal blowing martial sounds,
> At which the universal host up sent
> A shout that tore Hell's concave, and beyond
> Frightened the reign of Chaos and old Night."

The pleasantest note is struck by the behaviour of Dr. T. J. Honeyman, the new Rector, who not only showed complete tolerance of these outlandish observances, but made it clear that he was thoroughly enjoying himself. His equanimity, indeed, was as admirable as that of Lady Macbeth when she took charge of an embarrassing situation at the interrupted banquet. There was little excuse for the agitation of her spouse, who had merely seen the ghost of the man he had murdered sitting in his place at table. Had the Glasgow Rectorship been included among the honours promised in the Witches' prophecy, and fulfilled in fact, Macbeth would have been inured to far worse things than chronic insomnia, phantom daggers, and voices of doom; perhaps his morale might have been strengthened, not undermined, by the time he met Macduff, in single combat, at the end of Act V.

A.L.P.

PERSONALIA

APPOINTMENTS

Mr. Bruce Edgar Dutton Briant, Q.C., has been appointed by the Lord Chancellor to succeed Judge F. K. Archer as County Court Judge of Circuit 50 (Sussex). Judge Archer's retirement was reported at 118 J.P.N. 642. Mr. Briant was called to the bar by the Middle Temple in 1925. He took silk last year and was appointed during the same year deputy chairman of Brighton quarter sessions. Mr. Briant is well known in Sussex legal circles, and has on a number of occasions deputized for Judge Archer at Brighton county court.

Mr. R. A. Cork, assistant town clerk for the borough of Slough, Bucks., has been appointed deputy town clerk of Weymouth and Melcombe Regis, Dorset, in succession to Mr. R. W. J. Tridgell, whose new appointment as deputy town clerk at Torquay was reported at 118 J.P.N. 656. Mr. Cork was admitted in 1949, and gained the degree of LL.B., with honours, in 1946 at Manchester University. Prior to his appointment as assistant town clerk for Slough, he was assistant solicitor to the boroughs of Slough and Oldham, Lancs.

Mr. Derek John Jones has been appointed committee clerk (Grade A.P.T. III/IV) in the clerk's department of the Isle of Ely county council, commencing duty on November 10, 1954. Mr. Jones transfers from the clerk's department of Worcestershire county council and succeeds Mr. John Charles Wilkinson, LL.B., A.C.I.S., who has resigned his position as legal and committee clerk in the clerk's department of the Isle of Ely county council, and is now assistant solicitor to the Cambridgeshire county council. Mr. Wilkinson commenced with the Isle of Ely county council on May 1, 1948, being admitted on December 21, 1949, after serving his articles under the clerk to the council, Mr. R. F. G. Thurlow.

Mr. A. J. Cappell has been appointed legal clerk (Grade A.P.T. V) in the town clerk's department of Ealing, Middlesex, borough council. Mr. Cappell was formerly legal and administrative assistant in the clerk's department of Dorking, Surrey, urban district council.

Mr. P. Shorter, registrar for Southend East, Essex, has been appointed superintendent registrar for Barking and Ilford, in the same county.

Mr. Granville Davies has been appointed a probation officer in the Edmonton division of Middlesex (Wood Green area) and took up his duties on November 1. Mr. Davies was formerly a Home Office trainee.

Mr. H. H. Thomas, of Salop county council's treasury department, has been appointed town clerk of Bishop's Castle, Shropshire, in succession to Mr. Franklin Lavender, whose retirement on September 30 was reported at 188 J.P.N. 474.

RETIREMENTS

Mr. Reginald Hegan, town clerk of Rowley Regis, Staffs., retires next March, after 45 years' local government service.

Mr. John Wright, first and only full-time treasurer for Redditch, Worcs., has retired.

OBITUARY

Mr. Gilbert Wilson, of Westbury-on-Trym, chief clerk to the Port of Bristol Authority has died at the age of 51.

NOTICES

The next court of quarter sessions for the borough of Grantham, Lincs., will be held on Thursday, December 30, 1954, at 11 *a.m.*

PRACTICAL POINTS

All questions for consideration should be addressed to "The Publishers of the Justice of the Peace and Local Government Review, Little London, Chichester, Sussex." The questions of yearly and half-yearly subscribers only are answerable in the Journal. The name and address of the subscriber must accompany each communication. All communications must be typewritten or written on one side of the paper only, and should be in duplicate.

1.—Adoption—*Illegitimate child of married woman—Consent of putative father.*

A child aged four, and born during wedlock, was placed in the care of the local authority by a fit person order in 1953. The local authority placed the child with foster parents who now wish to adopt the child. Upon making the usual inquiries, the mother states that the father of the child is not her husband, but an American who has made payments towards the child's maintenance with the knowledge of her husband. Consent to the adoption has been given by the mother and her husband, but the father, who is now abroad, refuses his consent and expresses the wish to have the child. In these circumstances :

(1) Is the " father's " consent required ?

(2) If so, may the court dispense with such consent on the grounds that it is unreasonably withheld ? SARTRE.

Answer.

1. In our opinion it is not. We do not think he is a parent within the meaning of s. 2 of the Adoption Act, 1952, and he is not, we assume, a person who is liable to contribute to the maintenance of the child under an order or agreement.

2. If his consent were required, it could be dispensed with under s. 3 if the court came to the conclusion on the evidence that it was being unreasonably withheld in all the circumstances.

2.—Compulsory Purchase—*Parish council.*

We shall be glad to know whether a parish council can acquire land for a playing field by compulsory purchase. The usual procedure for compulsory purchase by a parish council is through an order made by the county council under s. 168 of the Local Government Act, 1933. The compulsory purchase must be for some purpose for which the parish council is authorized to acquire land. By s. 179 (*f*) of the Local Government Act, 1933, this procedure is not available where the enactment under which the parish council are purchasing only authorizes acquisition by agreement. This appears to prevent a parish council's acquiring land compulsorily where the land is being purchased under s. 4 of the Physical Training and Recreation Act, 1937, since a parish council is excluded from s. 5 (1) of the Act of 1937. Do you agree ?

If so, can you suggest any other authority enabling a parish council to acquire a playing field which would enable the playing field to be acquired by compulsory purchase. PHAEDRUS.

Answer.

Acquisition is authorized by the Local Government Act, 1894, s. 8 (1) (*b*), and it is not limited to purchase by agreement. Section 179 (*f*) of the Act of 1933 will not therefore exclude the application of s. 168 of that Act.

3.—Criminal Law—*Personation—Betting in name of another person.*

With reference to the question by "SLYDIP" in P.P. 1, at 118 J.P.N. 365, it occurs to me that in the circumstances given there might be an offence under s. 1 of the False Personation Act, 1874 :

"Any person who shall falsely and deceitfully personate any person . . . with intent fraudulently to obtain any . . . money . . . "

I appreciate that by reference to the words I have omitted in the above extract the principal persons concerned under that Act would appear to be fraudulent heirs, executors, administrators, etc., but the section seems to me to be wide eough to cover the obviously fraudulent conduct of the clerk in the question who otherwise escapes his due deserts. SEMELE.

Answer.

As we have stated in answer to another correspondent, we think it possible that the man may have caused someone else to make a false entry in the employer's books, in which case he might be prosecuted for falsification of accounts. For the reason indicated in the present question, we hardly think a prosecution for personation would lie. There is an attempt to obtain the acceptance of bets fraudulently, but not to obtain money, except in the contingency that the bets are successful.

4.—Dogs—*Stray dog—Finder desiring to keep—Licence.*

Does a person to whom a certificate has been issued under s. 4, Dogs Act, 1906 (and Dogs Amendment Act, 1928) require to take out a dog licence during the month that the person is bound to keep the stray dog ?

I maintain that a person issued with a certificate is keeping a dog and s. 8, Dog Licences Act, 1867, creates the offence of "*keeping* a dog without a licence." If the rightful owner subsequently claims the dog I suggest that the cost of the licence can be recovered from the owner together with the other expenses.

Certain persons, of course, are exempt from licence duty but I can find no mention of " certificate holders " in the list of exemptions. Further I am not aware of any stated case on this subject.

TIRESIAS.

Answer.

In our opinion, since the finder is keeping the dog, and the word keep is used in s. 4, he is in strictness under a duty to take out a licence. It may well be that no prosecution would be instituted during the period of one month.

5.—Housing Act, 1949, s. 4—*Mortgage repaid before due date.*

The Small Dwellings Acquisitions Acts, 1899 to 1923, specifically state that the borrower may, at any quarter day after one month's notice, repay any sum of £10 or a multiple thereof. The provisions of the above section make no mention as to whether the borrower may redeem his mortgage in part or whether he must repay the whole of the principal at once. Would you please let us know whether a local authority must, or can, accept part repayments of principal.

PERICLES.

Answer.

We can see no objection to accepting part payment whether provision is made in the mortgage deed or not. Under the Acts of 1889 to 1923 the borrower has a statutory right to make such repayments. Under the Act of 1949 the deed may provide for such repayments in which case the borrower will have a right to make them. If the deed makes no such provision acceptance of the repayment is at the option of the authority.

6.—Husband and Wife—*Discharge of order on ground of adultery—" Fresh evidence."*

I should be grateful if you could distinguish two cases before the Probate, Divorce and Admiralty Division, namely, *Roberts* v. *Roberts* [1953] 2 All E.R. 1248 ; 118 J.P. 11, before Lord Merriman, P., and Collingwood, J., and *Brammer* v. *Brammer* [1954] 1 All E.R. 649 ; 118 J.P.N. 184, before Lord Merriman, P., and Sachs, J.

In the former it was held : " Although the words ' upon fresh evidence ' appeared in the first part of s. 7 (*i.e.*, of the Summary Jurisdiction (Married Women) Act, 1895) they did not appear in, and were not to be read into, the second part of s. 7 . . ."

In the latter it was held : " The two parts of s. 7 (Summary Jurisdiction (Married Women) Act, 1895) must be read together so that the requirement that ' cause ' must be shown ' upon fresh evidence ' applied to the second part . . ." TRAJAN.

Answer.

The case of *Roberts* v. *Roberts, supra*, appears not to have been cited in *Brammer* v. *Brammer, supra*. The distinction, on the facts, is that in *Brammer* v. *Brammer* there had been a previous application to vary the order, which gave the husband the opportunity of giving the evidence in his possession of his wife's adultery since the order was made, whereas in *Roberts* v. *Roberts* there had been no previous application, and the real point was whether evidence of what occurred before the original order was made could be given in support of an allegation that adultery had been committed since that order was made. It was decided that such evidence could be given.

We agree that there are passages in the two cases which do not appear consistent, and it is to be hoped that the court may have an opportunity of explaining them further.

7.—Husband and Wife—*Maintenance order—Remarriage of wife—Whether collecting officer should inform husband.*

Some years ago A obtained a maintenance order against B, her then husband, under the Summary Jurisdiction (Separation and Maintenance) Acts, 1895 to 1949. A few months ago A obtained a decree absolute against B and has since remarried. So far as is known B is not aware of A's remarriage. In your opinion would it be proper for me to inform B of his former wife's remarriage so that he may apply for the discharge of the maintenance order ? SOREX.

Answer.

The husband must be aware of the fact that his wife was free to marry again and that she might do so. He can make his own inquiries, and we do not think the collecting officer is under an obligation to inform him. If the husband inquires of the collecting officer the latter could quite properly refer him to the register of marriages, giving

him the date if known, so that he could ascertain the particulars. The register is open to the public and we see no harm in giving the husband the means whereby he can consult it.

8.—Licensing—*Premises used in contravention of Betting Act*, 1853—*Offence discovered during visit by police—No issue of search warrant.*

Two police officers making a routine check of licensed premises during the morning period of permitted hours, enter the bar of an hotel, and see, somewhat to their surprise, a known bookmaker receive what appears to be betting slips and money from three customers in the bar, and place them in his jacket pocket. On being requested by the officers, the bookmaker empties his pocket and produces a number of slips which relate to horses being run at a particular track on the same day. He admits having taken the additional slips from other customers in the bar, immediately prior to the arrival of the police. The licensee, who was behind the bar when the police entered, is present during the whole proceedings, and on being questioned by the police, admits having seen the bookmaker take slips and money from the customers, but denies having taken an active part himself. Since s. 141 (2) of the Licensing Act, 1953 is declaratory and creates no offence under that Act, the offences (if any) committed by the bookmaker and licensee, will be under the Betting Act, 1853. Normally, where the police suspect licensed premises are being opened, kept, or used, in contravention of the Betting Act, 1853, they obtain a warrant under s. 11 of the Act and execute it in the usual way. In this case however, the police, although lawfully on the premises, have entered for an entirely different purpose.

(1) Do you regard the evidence available as sufficient to prove " user " of the premises by the bookmaker or licensee, contrary to the Betting Act, 1853 ?

(2) What would you consider to be the appropriate police action in these circumstances, even if (1) does not apply (including, if applicable, the authority to seize evidence necessary to prove the offence, and the correct charge against the licensee)? NABOB.

Answer.

(1) In our opinion, the evidence discloses a *prima facie* case under s. 3 of the Betting Act, 1853, against :

(*a*) The bookmaker, that he being a person using the premises used them for the purpose of betting with other persons resorting thereto ; and

(*b*) the licence holder, that he being the occupier of the premises knowingly and wilfully permitted them to be used by the bookmaker for the purpose of betting with other persons resorting thereto. (*See R.* v. *Porter* (1949) 113 J.P. 194, in which previous decisions on the subject were reviewed.)

(2) There is no power to arrest or to search persons or to seize papers, etc., save under the authority of a search warrant issued in accordance with s. 11 of the Act (*i.e.*, this is usually in the form given in sch. 1 to the Gaming Act, 1845) : proceedings therefore will be instituted by information and summons. Before the hearing notice to produce the betting slips must be served on the defendant and if he then fails to produce them at the trial secondary evidence of their contents may be admitted. Appropriate police action would require that the slips in the bookmaker's possession should be copied before they are returned to him.

9.—Magistrates—*Practice and procedure—Criminal cases—Submission of no case—Defendant giving and calling evidence of submission overruled.*

The generally accepted practice in petty sessions and quarter sessions is that at the conclusion of the case for the prosecution the accused, if he has pleaded not guilty, may submit that there is no case to answer.

The court then normally decides if and to what extent the submission shall be allowed and, if the submission is overruled wholly or in part, then the accused is permitted to make his defence.

Stone (Volume 1 of 1954) deals with the matter on p. 240, the relative sentence reading as follows :

" At the close of the case for the prosecution the defendant's representative will either submit that on the facts there is no case to answer, or will open his client's case and call his witnesses, who will be cross-examined on behalf of the prosecutor."

The wording of the above sentence does not make clear whether the accused can proceed with his defence if his submission of no case to answer has been overruled or whether he must choose one alternative or the other : in other words must he stand or fall on his submission ? TRATES.

Answer.

In our view if the submission is overruled the defendant has the right to proceed with his defence. On the question of " no case " *see* articles at 100 J.P.N. 275 and 111 J.P.N. 251.

10.—Rating and Valuation—*Rates paid by mistake—Extent of refund.*

An estate in the area of this rating authority, comprising a mansion, cottages, farm and woodland, were owned by A, he occupying the mansion, but letting the farm and retaining the sporting rights thereon. During the summer of 1947, the estate was purchased by B, who occupied both the mansion and the farm, an estate manager being appointed to supervise the farming operations and other matters. General rate was paid on the sporting rights by A, and the rating authority, unaware that severance of the occupation of the land from that of the sporting rights no longer existed, demanded and received payment from B of the rate on the sporting rights up to and including that for the half-year ending September 30, 1952.

During that half-year B queried his liability for this rate. As a result the assessment was deleted from the valuation list, the rate for the half-year being refunded, *i.e.*, from the operative date of the proposal. B has now again raised the matter, claiming that the rates paid from 1947 to March, 1952, should also be refunded.

Although a refund of these payments would appear to be equitable, the crux of the problem seems to be whether the rates were paid under a mistake of law or of fact, and I am in some doubt as to the legality of a further refund. ANTIOCHUS.

Answer.

We think the mistake was one of fact. Our view about refunds of overpaid rates is that the rating authority should act as a fair minded man would act in his own affairs, when satisfied that there has been a genuine mutual mistake. The Local Government Board and Ministry of Health encouraged refunds on this principle, even offering sanction under s. 228 of the Local Government Act, 1933, if the district auditor has technical qualms.

11.—Road Traffic Acts—*Insurance—Policy covering holder while driving vehicle not belonging to him—Vehicle taken and driven without owner's consent—Is policy effective ?*

A defendant (XY) was recently charged before my justices with taking and driving away a motor car without the consent of the owner contrary to s. 28 of the Road Traffic Act, 1930, and pleaded guilty. He was also charged with not having a policy or security in respect of third party risks contrary to s. 35 of the Road Traffic Act, 1930. To this charge he pleaded not guilty and his advocate submitted that, although the defendant had pleaded guilty to driving away the motor vehicle in question without the consent of the owner, he was in fact covered under his policy of insurance, which policy together with the certificate of insurance were produced to the court. The policy in question specifically covers the defendant whilst personally driving a motor car not belonging to him and not hired to him under a hire purchase agreement, and provided there is no other insurance under which he may be entitled to claim indemnity, there is no requirement in the policy that the defendant shall be driving a vehicle not belonging to him with the consent of the owner of such vehicle.

I shall be obliged if you will let me have your opinion whether, in your view, an offence has been committed and it will be of great assistance if you can refer me to any authorities on the point. JAKAR.

Answer

If the insurance company denied liability on a claim made the question would have to be decided by a court in a civil action ; but for the purposes of the question asked here we consider that as the policy appears in terms to cover the use of this vehicle no offence has been committed against s. 35 of the 1930 Act. We do not know of any High Court decision on the point.

12.—Road Traffic Acts—*Vehicles (Excise) Act*, 1949—*Time limit for summary proceedings.*

I have read with some interest the contributed article at pp. 384-389.

I think your contributor is at fault in saying the Customs and Excise Act, 1952, does not apply in relation to road fund licences save so far as may be otherwise provided by order. The Transferred Excise Duties (Application of Enactments) Order, 1952, relates to the powers to levy duty on licences transferred to local authorities by the Finance Acts of 1908 and 1949, that is dog, gun, game, hawkers, moneylenders, pawnbrokers and refreshment-house keepers. The power to levy duty on vehicle excise licences is laid on the shoulders of county councils by s. 8 (1) of the Vehicles (Excise) Act, 1949, and it is the Road Vehicles (Excise Duties and Licences) Order, 1953, to which attention should be paid. The limitations imposed by the order made under s. 313, therefore, do not extend to vehicle excise licences, these latter not being " transferred duties." The revenue from the first set of licences, known as Local Taxation Licences, goes to the county general fund but revenue from the second set, known as Vehicles Excise Licences (previously known as Road Fund Licences) goes to the Exchequer.

The time limit for summary proceedings under the Vehicles (Excise) Act, seems to be three years, except of course for proceedings under s. 15 (1) where it is limited to 12 months. JOKAL.

Answer.

We agree that, apart from s. 15 (1) of the 1949 Act, the time limit is three years and not six months. (Customs and Excise Act, 1925, s. 283 (1)).

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